In the Supreme Court

OF THE

United States

OCTOBER TERM, 1950

Office Supreme Court, U.
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No. 112

TADAYASU ABO, et al., etc.,
Petitioners,

vs.

J. HOWARD MCGRATH, as the Attorney General of the United States, et al.,
Respondents.

and

MARY KANAME FURUYA, et al., etc.,
Petitioners,

vs.

J. HOWARD MCGRATH, as the Attorney General of the United States, et al.,
Respondents.

PETITIONS FOR WRITS OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit
and
BRIEF IN SUPPORT THEREOF.

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No. 112

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Mary Kaname Furuya, et al., etc.,
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PETITIONS FOR WRITS OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Tadayasu Abo and the other Nisei who were appellees in the Court of Appeals for the Ninth Circuit in equity proceeding No. 12251 therein and Mary Kaname Furuya and the other Nisei who were appellees in companion equity proceeding No. 12252 therein, consisting of a total of 3429 petitioners[1] herein, against whom the said Court of Appeals rendered an unfavorable Opinion and decisions in those consolidated cases reversing the judgments of the United States District Court for the Northern District of California, Southern Division, on January 17, 1951, and remanding the causes as to them for further hearing in said District Court, petition that writs of *certiorari* issue to review the judgments entered against them on January 17, 1951, in a cause pending therein numbered and entitled "No. 12251, J. Howard McGrath, as the Attorney General of the United States, et al., Appellants, vs. Tadayasu Abo, et al., etc., Appellees" and in the companion cause pending therein numbered and entitled, "No. 12252, J. Howard Mc-

[1]This figure does not include the following eight persons who were among the appellees in the Court of Appeals but who filed dismissals of their individual suits in the District Court below while the causes were pending on appeal and thereafter instituted individual suits to determine their political status in the U. S. District Court in Los Angeles, viz., Norio Kiyama, Miyoko Kiyama, Michiko Takikawa (Takigawa), Yukiko Nakanishi, Yemiko Hamaji, Akira Tanaka, Harry Masao Hamachi and Gentaro Yamashita. It does not include Goichi Nerio who likewise entered such a dismissal but who never had been a party to the proceedings. It does not include Tetsuo Frank Kawakami, who was an appellee in equity appeal No. 12251 in the Court of Appeals and subsequently appeared therein through another attorney. It does not include the following persons who were appellees in the Court of Appeals below who instituted separate suits to determine their political status in other U. S. District Courts during the pendency of the causes below, viz., Isao James Kuromi, Toshiko Ichikawa, Iwao Shigei, Hajime Kariya, Yoshiko Yokoi, Tadao Adachi and Yukiko Adachi.

Grath, as the Attorney General of the United States, et al., Appellants, vs. Mary Kaname Furuya, et al., etc., Appellees".[2] The said judgments of the said Court of Appeals reverse the judgments of the U. S. District Court for the Northern District of California, Southern Division, as to them and remand the causes as to them to that Court for further proceedings in conformity with the Opinion of said Court of Appeals, to-wit, to enable the appellants therein to submit to the trial Court evidence against them individually meeting or overcoming or tending to meet or overcome what that Court declared was the *prima facie* case established by them in the trial Court by a "rebuttable presumption" that the renunciation of U.S. citizenship by each of them while interned in a concentration camp by the government was the product of coercion or duress. In effect, this orders 3429 individual hearings to be had in the District Court below. (If each such separate hearing required one day of trial it would take one district judge approximately 15 years to conclude such hearings.) The said Court of Appeals denied the appellees' petitions for rehearings in said causes on February 27, 1951. (R. 611.)

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[2]By stipulation and Court order (R. 510) the record in *Mary Kaname Furuya v. J. Howard McGrath* in appeal No. 12252 was not printed for consideration by the Court of Appeals but remained in typewritten form and that cause was held in abeyance pending a final determination of this cause, it being provided thereby that if the final disposition of this cause on appeal proved dispositive of the issues of fact and law that the same should be the final decision on said issues therein. Inasmuch as the record therein is identical with the record herein except for the names of the parties below, and a Designation, Defendant's Return to Court's Order to Show Cause and Defendants' Supplemental Return to Court's Order to Show Cause petitioners herein have designated that said parts of the record therein be printed in the supplemental transcript of record herein without being printed separately.

STATEMENT DISCLOSING BASIS UPON WHICH IT IS CONTENDED THAT THIS COURT HAS JURISDICTION TO REVIEW THE JUDGMENTS IN QUESTION.

The United States District Court for the Northern District of California, Southern Division, had jurisdiction of the proceedings below under the provisions of 28 USCA, Sec. 41 (1), now Sec. 1331, 28 USCA, Sec. 400, now Sec. 2208, and 8 USCA, Sec. 903. The Opinion of that Court (R. 410-427) is reported in 77 Fed. Supp. 806 and its Opinion in the companion proceedings in habeas corpus is reported in 76 Fed. Supp. 664.[3]

The Court of Appeals for the Ninth Circuit had jurisdiction to review those decisions of the District Court below by virtue of the provisions of 28 USCA, Sec. 1291. Its Opinion (R. 598) thereon is reported in *McGrath v. Abo,* 186 Fed. 2d 766. Its Opinion in the companion habeas corpus appeals is reported in *Barber v. Abo,* 186 Fed. 2d 775.

The Supreme Court of the United States has jurisdiction to review the judgments in question by writs of certiorari by virtue of the provisions of 28 USCA, Sec. 1254 (1). Under authority of 28 USCA, Sec. 2101 (e), Mr. Justice William O. Douglas extended petitioners' time to file these petitions for certiorari to June 11, 1951.

SUMMARY AND SHORT STATEMENT OF THE MATTERS INVOLVED.

Each of the 3429 petitioners herein is a person of Japanese ancestry who was born a citizen of the United States. In 1942, along with thousands of other citizens and residents of like ancestry, they were excluded by the

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[3]The two equity cases were numbered 25294 and 25295 in the District Court. The two habeas corpus proceedings were numbered 25296 and 25297 therein. The four causes were consolidated under No. 25294.

Government from the West Coast area, hustled into stockades, evacuated and lodged in concentration camps and there were detained for several years without hearings being afforded them on the cause, reason or necessity for that mistreatment. Thereafter, because of duress they renounced United States nationality, as hereinafter explained. The history of the causes is as follows:

On February 19, 1942, the President issued Executive Order No. 9066 (7 F.R. 1407) providing for the transportation and subsistence of persons who thereafter might be prohibited from entering or leaving military areas thereafter to be prescribed by the Secretary of War or his military commanders. On March 2, 1942, General John L. DeWitt, Lt. General, military commander Western Defense Command and Fourth Army, by Public Proclamation No. 1 (7 F.R. 2320) prescribed Military Area Nos. 1 and 2 and required all citizens and aliens therein of Japanese lineage to give notice of change of residence. On March 16, 1942, by Public Proclamation No. 2 (7 F.R. 2405), he prescribed Military Areas Nos. 3 to 6, inclusive, making like requirements of citizens and aliens of Japanese lineage therein.

On March 18, 1942, the President issued Executive Order No. 9102 (7 F.R. 2165) which established the War Relocation Authority to formulate a program for the removal from the military areas designated by military commanders of persons or classes of persons designated by Executive Order No. 9066. This order vested the Director of the War Relocation Authority with a supervisory jurisdiction over all persons deported from the military areas.

Thereafter, on March 21, 1942, 18 USCA, Sec. 97A, was enacted by Congress, making it a misdemeanor for any excluded person to leave or enter the military areas prescribed by a military commander. Thereafter, on March 24, 1942, that military commander issued Public Proclamation No. 3 (7 F.R. 2455) which imprisoned them

within limits inside the military areas 1 to 6, inc., set up by Public Proclamations 1 and 2. By Public Proclamation No. 4 (7 F.R. 2601) of March 27, 1942, and No. 6 (7 F.R. 4435) all such persons were frozen in Military Areas Nos. 1 and 2. Between March 24, 1942, and August 18, 1942, the military commander issued 108 civilian exclusion orders providing for the imprisonment of 73,000 citizens and 43,000 aliens of Japanese ancestry. The first of these orders (7 F.R. 2581) became effective on March 30, 1942, and the last (7 F.R. 6703) was issued on August 18, 1942. These civilian exclusion orders commanded them to depart from their residences and ordered them into "stockades" termed Assembly and Reception Centers. They were in diametrical conflict with Public Proclamation No. 3 which prohibited them from leaving the immediate vicinity of their residences or places of business. A violation either of an exclusion order or that proclamation was punishable under 18 USCA, Sec. 97A.

Pursuant to the provisions of these civilian exclusion orders, all issued under an asserted authority of Executive Order 9066, the petitioners, along with thousands of other citizens and residents of like ancestry, were driven from their homes into the Assembly and Reception Centers. See *Korematsu v. U. S.,* 323 U.S. 214, for history of this vicious program. Thereafter, they were evacuated and lodged in various wartime concentration camps which were given the euphemistic names of War Relocation Centers. See *Ex parte Endo,* 323 U.S. 283. On May 19, 1942, the General issued Civilian Restrictive Order No. 1 (8 F.R. 982); this was a general detention order prohibiting them from leaving the Assembly, Reception and War Relocation Centers without permission.

Thereafter, several thousands of these native born U.S. citizens, without being given hearings on the cause or necessity for their ruthless uprooting and mistreatment

arbitrarily were confined to the Tule Lake Center in California and were denied relocation in the United States. In 1942 all the male Nisei of draft age arbitrarily were excluded from the military services and arbitrarily were classified by the U.S. government as "alien enemies" under the draft classification of 4-C. All the petitioners, as well as those other citizens of like ancestry likewise detained in various war relocation centers and restrained of their liberty, were deprived also of substantially all their rights, privileges and immunities of U.S. citizenship. The Government thereby repudiated their citizenship and actually deprived them of citizenship.

The Government next decided to convert the Tule Lake Center into a segregation center to house detained aliens who, by reason of long detention and despair of eventual rehabilitation, requested to be repatriated to Japan. The plan was carried into partial execution but was abandoned in the latter part of 1943. Citizens and aliens who desired to remain in the United States and aliens seeking repatriation were housed indiscriminately in the Center. Alien pressure groups were permitted by the authorities in charge to organize, develop and to proselyte among the citizens and to try by persuasive and terroristic methods to prevail upon them to request to be sent to Japan and to renounce for such purpose. The Government authorities in charge permitted this to be done because they were convinced that all the confined citizens and aliens were to be removed to Japan.

Thereafter the renunciation statute, Title 8 USCA, Sec. 801(i) (Act of July 1, 1944 (54 Stat. 677)), was enacted by Congress at the special instance and request of the Justice Department for the disclosed sole purpose of procuring the renunciations of Nisei detained in the Tule Lake Center simply to insure a prolongation of their unconstitutional internment and for no other purpose

whatever. See the affidavit of John L. Burling, once Director of the Alien Enemy Control Unit for the Justice Department, R. 158-161 in the companion equity cases, so admitting and relating its history. It reads as follows:

> "A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:
>
> (i) Making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense."

The procedure for approving such renunciations is set up in 8 Nationality Regulations, Secs. 316.1 to 316.9, inclusive.

During their detention by the Government at the Tule Lake Center, 5,371 American-born citizens of Japanese ancestry of the age of eighteen (18) years and upward, in 1945, signed applications for renunciation of U.S. nationality. In eight (8) other like concentration camps a total of only 151 similarly situated and abused citizens signed like applications. Thereupon the Justice Department dispatched its agents to the Center to invite renunciations and to conduct hearings thereon. Behind the closed doors of examining rooms from which all persons except these Government agents and the detainee who was to be examined were excluded they conducted these pseudo-hearings. R. 177. Thereafter they made recommendations to the Attorney General to approve the renunciations so obtained. No like renunciations were invited, solicited or obtained from any other detained citizens of different ancestral type and, so far as can be ascertained, the Attorney General keeping renunciations records confidential and secret, none arose from any source outside those concentration camps.

When the renunciations had been procured from these Nisei and the Attorney General thereafter had time to and did approve them the renunciation statute, 8 USCA, Sec. 801 (i), was rendered *inoperative* by the Joint Resolution of Congress of July 25, 1947, 61 Stat. 454, apparently at the suggestion of the Attorney General.

The surrendering of citizenship by this means of renunciation was nothing but the Government induced formal confirmation by the victims of the fact that the Government's repudiation of their citizenship, and of all the rights, privileges and immunities attaching thereto, through the instrumentality of evacuation and subsequent prolonged internment, without hearing on the reasons or necessity for this abuse being given them and without cause and with no opportunity to secure liberation therefrom being offered them, in fact, already had deprived them of citizenship.

On July 14, 1945, when, with few exceptions, all these so-called renunciations hearings had been concluded President Truman, under authority of the Alien Enemy Act, promulgated Proclamation No. 2655 (10 F.R. 8947) which provides, in part, as follows:

> "All alien enemies now or hereafter interned within the continental limits of the United States pursuant to the aforesaid proclamations of the President of the United States who shall be deemed by the Attorney General to be dangerous to the public peace and safety of the United States because they have adhered to the aforesaid enemy governments or to the principles of government thereof shall be subject upon the order of the Attorney General to removal from the United States and may be required to depart therefrom in accordance with such regulations as he may prescribe."

Apparently this proclamation had been requested by the Attorney General. The validity of this proclamation

and the question whether it is applicable to the petitioners is involved herein. The proclamation to which it refers, insofar as the Attorney General asserts it to be applicable to petitioners, is Executive Proclamation No. 2525 (6 F.R. 6321) of December 7, 1941, promulgated under the Alien Enemy Act, which enjoined "all natives, citizens, denizens, or subjects of the Empire of Japan" of the age of 14 years and upward to refrain from crimes against the public safety and admonished them that all alien enemies were liable to restraint or to removal under the Alien Enemy Act.

The Alien Enemy Act, 50 USCA, Sec. 21 et seq., provides in part as follows:

> "Whenever there is a declared war between the United States and any foreign nation or government, * * * and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies * * *"

The question whether this Act still is operative and the question whether, if so, it is applicable to the petitioners also are involved herein.

When the Attorney General thereafter had time to and did approve the renunciations, the renunciation statute, 8 USCA, Sec. 801 (i), was rendered *inoperative* by the Joint Resolution of Congress of July 25, 1947, 61 Stat. 454, apparently at the request of the Attorney General.

After V-J Day, September 2, 1945, the Attorney General issued removal orders against the renunciants on the theory that they arbitrarily were subject to removal to Japan as alien enemies under the provisions of the Alien Enemy Act, Title 50 USCA, Sec. 21 et seq., and Presi-

dential Proclamation No. 2655, albeit none of them at any time whatever was afforded any hearing on the cause, reason or necessity for any such removal.

On November 13, 1945, these suits were instituted in the District Court below in joint, several and representative class actions under Rules 20, 23(1-3), 18a, b, 19a and b, F.R.C.P., by some 987 renunciants interned at the Tule Lake Center. The suits lie in equity to rescind their written renunciation applications, to cancel the approval orders of the Attorney General, to liberate them from internment and to enjoin their removal to Japan. The suits also sought a declaration of their U.S. nationality and asked for declaratory relief. Thereafter, pursuant to various stipulations, motions to join and Court orders additional parties plaintiff were joined in said suits and, ultimately, 4410 plaintiffs appeared therein. Among the total were 899 internees who were infants at the time of renunciation and 8 adults who were mental incompetents when they renounced, the infants and incompetents appearing through guardians ad litem. Concurrently with the institution of said suits there were filed on behalf of the original 987 plaintiffs petitions for writs of habeas corpus—to which a number thereafter likewise were joined until the Tule Lake Center was closed out.

Thereafter, in due course, the Attorney General cancelled all except 302 of the removal orders. Each of the 302 was a party plaintiff in the causes in the District Court and an appellee in the causes in the Court of Appeals. Of that group, 16 were infants at the time of their renunciations and, inasmuch as the Court of Appeals affirmed the judgments of the District Court in their favor, they are not petitioners herein. The 138 who were petitioners in the companion habeas corpus proceedings below, after their transfer to Crystal City, Texas, and Bridgeton, N. J., were *released* to their counsel pursuant to the "Consent" dated September 6, 1947, and "Order"

dated September 8, 1947. See R. 195-7 in Transcript of Record in companion case of *Aoki v. McGrath*. The 164 others who likewise were detained under removal orders and were parties to the equity causes but not to the habeas corpus proceedings below simultaneously were *paroled* to their counsel thereunder.

Both of these causes were submitted to the District Court below on their merits on October 10, 1947, under a Stipulation, R. 408 (a), and Court order which provided that the "proofs be closed". That Stipulation provided, in part, as follows:

> "if the Court deems it necessary for a proper decision of any factual or legal issue or issues involved in this case as to any particular plaintiff or plaintiffs the Court shall order the production of further or additional evidence thereon and, in such an event, the parties hereto shall have the same rights in respect to the introduction of such further or additional evidence as to any such plaintiff or plaintiffs as they would have had if they had not entered into this stipulation."

On April 29, 1948, the Opinion of the trial Court (R. 410), reported in 77 Fed. Supp. 806, was rendered. It declared that upon the basis of the "class showing" made by plaintiffs an interlocutory decree be entered cancelling the renunciations and declaring the plaintiffs to be citizens of the United States (R. 426). It also declared that "It may be that if the defendants were to go forward with further proof, they could present evidence that certain of the plaintiffs individually acted freely and voluntarily despite the present record facts" and, in consequence, ordered that the defendants "may have 30 days from date within which to file a designation of any of the plaintiffs concerning whom they desire to present further evidence" and that, as to any not so designated, a final decree was to be entered. The Interlocutory Decree (R. 430 at 431) provided that if any such designa-

tions were made they were to be made *"in an exercise of good faith"*. Thereafter, the defendants were given a series of Court extensions of time to file such designations that covered a period of ten (10) months.

Thereafter on February 25, 1949, the defendants filed purported "Designations" (R. 549, R. 544) containing a list of all the 4410 plaintiffs in the two causes, dividing them into various classifications, one being of 8 renunciant plaintiffs whom the defendants therein admitted were medical cases mentally incompetent to execute a binding contract at the time they renounced. (The Court of Appeals, however, affirmed the judgments of the District Court as to them.) Plaintiffs thereupon moved to strike those Designations (R. 442) on the grounds they were not filed in good faith and were sham and prayed that an order to show cause issue to defendants requiring them to show cause why they should not be stricken and a final judgment and decree be entered in favor of plaintiffs. An affidavit of Merits was filed in support of these motions. (R. 445.) Defendants filed returns thereto on March 7, 1949 (R. 570, R. 560), and supplemental returns thereon on March 18, 1949. (R. 583, R. 592.) Because the District Court found, on the evidence before it and had actual judicial knowledge that the Designations did not conform to the provisions of the Court's Opinion or Interlocutory Judgment and were not filed in good faith and were sham it ordered the Designations stricken (R. 455) and a final judgment entered for the petitioners. Findings of Fact and Conclusions of Law (R. 461) were signed and filed April 12, 1949, and the Final Orders, Judgments and Decrees (R. 482) cancelling the plaintiffs' renunciations and declaring them to be U.S. citizens and enjoining the defendants from interfering with their rights, liberties, privileges and immunities as such were entered on April 12, 1949.

From those final judgments of the District Court the defendants therein filed timely notices of appeal (R. 488) on April 26, 1949, and thereafter perfected their appeals to the Court of Appeals for the Ninth Circuit. On January 17, 1951, the Court of Appeals affirmed the judgments of the District Court insofar as they affected the 899 appellees therein who were under the age of twenty-one (21) years at the time of renunciation and as to one group of fifty-eight (58) appellees therein who were adults at the time of renunciation, and also of eight (8) mental incompetents, because of admissions made by the defendants. However, that Court reversed the judgments as to the petitioners herein and remanded the causes as to them to the District Court below to enable the defendants therein to introduce or offer to introduce evidence tending to meet or overcome the *prima facie* cases it decided the petitioners herein therein had established, through the medium of a "rebuttable presumption" of coercion, that their renunciations had been individually coerced. In so doing the Court of Appeals ignored and set aside the judgments of the District Court and its findings of fact, supported by overwhelming evidence that each renunciation was the product of coercion, in addition to the presumption thereof. Further, the Court of Appeals in so doing ignored and set aside the District Court's orders striking the Designations filed by the defendants therein and its findings of fact made thereon which were supported by substantial and conclusive evidence that those Designations did not conform to the type which it had authorized and that they had not been filed in good faith and were sham. The Court of Appeals thereby exceeded its own lawful jurisdiction and invaded the jurisdiction of the District Court below and erred in reversing the judgments. The petitioners herein, as to whom the judgments were reversed and remanded to the District Court below, thereupon petitioned

that Court for a rehearing of their causes but, on February 27, 1951, that Court denied their petitions for rehearing. (R. 611.) Your petitioners seek a review of said judgments of the said Court of Appeals for the Ninth Circuit reversing the causes as to them and remanding said causes to the District Court below for further proceedings in conformity with its Opinion.

QUESTIONS PRESENTED.

1. Are renunciations of United States nationality made by the petitioners under the wartime renunciation statute, 8 USCA, Sec. 801 (i), which was operative for only a brief time during the declared war period, void for being the direct and proximate result of the duress in which they were held and to which they were subjected by the Government during their unconstitutional internment, imposed upon them simply because they were of Japanese lineage, and when those renunciations were the products of that illegal detention, were illegally induced and were the fruits of wrongdoing by the government and its agents?

2. Is the renunciation statute, 8 USCA, Sec. 801 (i), void on its face or as applied to the petitioners for depriving them of the due process of law forbidden by the 5th Amendment and for being an *ex post facto* law and bill of attainder forbidden by Clause 3, Section 9 of Article I of the Constitution because renunciations thereunder were taken only from interned citizens of Japanese ancestry to the exclusion of other citizens, in accordance with the Governmental objective for which that statute was enacted, and so soon as that limited objective had been attained the statute was rendered inoperative?

3. Has the Court of Appeals arbitrary jurisdiction to ignore and set aside proper findings of fact made by the

District Court below that the renunciations of petitioners were the products of duress when its findings of fact and judgments thereon were based upon substantial evidence and there was no conflict in the evidence on that issue or where, at most, the conflict thereon was insubstantial and when, as the Court of Appeals' own Opinion declares that those findings were sustained by the operation of a presumption that the renunciations were caused by coercion, and thereupon order the causes reopened and remanded to the District Court below to enable the defendants therein to introduce additional evidence, which they previously had waived, on such issue, in violation of the rule that findings of fact which are not clearly erroneous may not be disturbed by an appellate tribunal?

4. Has the Court of Appeals jurisdiction to ignore and set aside proper findings of fact made by the District Court below that the Designations filed by the defendants below did not conform to what it had authorized to be filed and that those Designations were filed by the defendants in bad faith and were sham, and to set aside its orders striking those Designations for said reasons, when the District Court's findings of fact and orders striking those Designations were made upon substantial supporting factual evidence and facts of which it had judicial knowledge, in the absence of any conflict in the evidence thereon or where, at most, the conflict was insubstantial?

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRITS.

1. The Court of Appeals for the Ninth Circuit has decided the following important questions of federal law in a way probably in conflict with applicable decisions of the Supreme Court. These are as follows:

(a) It has held that renunciations taken from the Nisei petitioners, under the short lived wartime renunciation statute, 8 USCA, Sec. 801 (i), during a detention forced upon them by the Government simply because of their Japanese lineage does not violate the due process clause of the 5th Amendment even though that statute was enacted by Congress at the special instance and request of the Attorney General for the special purpose of obtaining the renunciations of Nisei so detained and, so soon as obtained and approved, was rendered *inoperative* by Congress, apparently at the request of the Attorney General, thus preventing its provisions from being applied to other persons of the same and also of different types of ancestry whether or not detained by the Government. In so holding it decided the causes in a way in conflict with the express holdings of this Court in *Yick Wo v. Hopkins,* 118 U.S. 356, and *Yu Cong Eng v. Trinidad,* 271 U.S. 500, 528.

(b) It has decided that the renunciations taken by the Attorney General from the petitioners while they were held in a concentration camp, pursuant to the Government's admitted statutory objective of 8 USCA, Sec. 801 (i), of thereby insuring a prolongation of their unconstitutional detention were not illegal for being the fruits of that *illegal detention* and the *fruits of wrongdoing* by the Federal Government and its agents prohibited by the due process guaranty of the 5th Amendment and by the unlawful search and seizure clause of the 4th Amendment. In so holding it decided the causes in a way in conflict with the principles laid down by this Court in *Weeks v. U. S.,* 232 U.S. 383, *McNabb v. U. S.,* 318 U.S. 332, and *Upshaw v. U. S.,* 335 U.S. 410.

(c) It decided, *sub silentio,* that renunciations taken from petitioners for the admitted governmental purpose for which 8 USCA, Sec. 801 (i) was enacted and to which it was applied, i.e., for the purpose of insuring a

continuance of the petitioners' unconstitutional internment without hearing on the cause or necessity for that internment and at a time when each of them was faced with a choice of renouncing either to secure liberation from that internment by being transported to Japan or to remain in the protective security of a concentration camp to escape lynch law and mob violence in communities hostile to them if they relocated in this country, were not void for being illegally induced. In so doing it decided the causes in a way probably in conflict with the principle laid down by this Court in *Bram v. U. S.*, 168 U.S. 532, that documents illegally induced by the Government or its agents are illegal and prohibited by the due process clause of the 5th Amendment and by the unlawful search and seizure clause of the 4th Amendment. The Court of Appeals overlooked the fact that internment and also removal under the Alien Enemy Act after the cessation of hostilities is punishment as serious as that for crime and, in consequence, that they should be protected by the same safeguards the Constitution erects against coerced waivers of legal rights.

(d) In deciding that, after the petitioners had proved a *prima facie* case that their renunciations were taken from them during their internment and were caused by factual duress, it was not the evidentiary burden of the defendants to prove that the renunciations were free from coercion and inducement. In so deciding it ignored the rule laid down by this Court in *Bram v. U. S.*, 168 U.S. 532, that statements made by persons held in custody cannot be introduced into evidence unless the defendants, as agents of the Government, sustain their burden of first laying a preliminary foundation that such statements were made voluntarily.

2. The Court of Appeals for the Ninth Circuit in these causes has decided several serious questions of federal law

which have not been, but should be settled by this Court. These are as follows:

(a) It decided, *sub silentio,* that the renunciation statute, 8 USCA, Sec. 901 (i) neither on its face nor as applied to petitioners, is a bill of attainder proscribed by Clause 3, Section 9 of Article I of the Constitution even though it was enacted at the request of the Attorney General for the exclusive purpose of obtaining the renunciations of nationality from detained Nisei just to insure their continued detention "without violating the Constitution" (R. 160) to the exclusion of other citizens, and was utilized for that exclusive purpose.

(b) It decided, *sub silentio,* that 8 USCA, Sec. 801 (i), applied to the petitioners by the Attorney General as the legal implementation to insure a continuation of their illegal internment and final removal to Japan and thereby impose that punishment on them for what the Government arbitrarily was pleased to deem was past disloyal conduct or expression, although no hearings on such matters had been given them, the said statute, together with the removal orders and the prolonged internment thereunder imposed upon them, is not void for being an *ex post facto* law prohibited by Clause 3, Section 9 of Article I of the Constitution.

(c) It has decided, in substance, that it is not a violation of due process of law guaranteed by the 5th Amendment for the Government arbitrarily to evacuate and intern citizens without hearing, simply because of their type of lineage and thereby deprive them of their liberty and of all their rights, privileges and immunities and then, simply to prolong their illegal internment and justify their removal to Japan, accept from them renunciations as a ratification of that unconstitutional treatment in order to validate the renunciations, internment and removal.

3. In its Opinion and decisions in the causes the Court of Appeals exceeded its lawful jurisdiction, power and authority and so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

(a) In substance and effect it ignored and set aside the Stipulations (R. 408a) and Court order (R. 408b) submitting the causes on their merits to the District Court and thereby exceeded its jurisdiction and usurped a supervisory jurisdiction and control over the District Court which is not lodged in it by 28 USCA, Sec. 2106, or any other statute.

(b) In substance and effect it ignored, set aside and revised proper findings of fact that each renunciation was caused by factual duress which were made by the District Court on substantial supporting evidence and in the absence of conflicting evidence thereon or where the conflict, at most, was insubstantial, and thereby exceeded its own lawful jurisdiction, exercised a supervisory jurisdiction and control over the District Court which is not conferred upon it by 28 USCA, Sec. 2106, and violated the rule prohibiting the setting aside of findings which are not clearly erroneous. See Rule 52 (a) F.R.C.P. precluding the exercise of any such power and the rule of this Court laid down in *U. S. v. U.S. Gypsum Co.*, 333 U.S. 364, 394-5, defining the limits of the "clearly erroneous" rule.

(c) In ignoring and setting aside the findings of fact and Orders striking the defendants' Designations made by the District Court upon substantial supporting evidence that those Designations were not made in good faith but were sham, and in the absence of conflicting evidence on that issue or where the conflict, at most, was insubstantial, it exceeded its own lawful jurisdiction, invaded the jurisdiction of the District Court, exercised an unlawful supervisory jurisdiction and control over that Court and vio-

lated the rule prohibiting the setting aside of findings of fact which are not clearly erroneous as set forth in Rule 52 (a) F.R.C.P., and violated the rule limiting Appellate Court's revisionary power to disturb such findings which this Court laid down in *U. S. v. U. S. Gypsum Co.*, 333 U.S. 364, 394-5.

PRAYER FOR THE ISSUANCE OF THE WRITS.

Wherefore, the petitioners in said causes pray that this Court issue its writs of certiorari in said causes directed to the United States Court of Appeals for the Ninth Circuit commanding said Court to certify and send to this Court on a day certain, to be therein designated, a full and complete transcript of the records and all proceedings in the causes numbered and entitled in said Court, "No. 12251, J. Howard McGrath, as the Attorney General of the United States, et al., Appellants, vs. Tadayasu Abo, et al., etc., Appellees" and "No. 12252, J. Howard McGrath, as the Attorney General of the United States, et al., Appellants, vs. Mary Kaname Furuya, et al., etc., Appellees," to the end that said causes may be reviewed by this Court as provided by law, that said judgments of said United States Court of Appeals for the Ninth Circuit be reversed, that the judgments of the District Court below be affirmed and that your petitioners have such other and further relief in the premises as may seem just.

Dated, San Francisco, California,
June 8, 1951.

WAYNE M. COLLINS,
Counsel for Petitioners.

CERTIFICATE OF COUNSEL.

The foregoing petitions for writs of certiorari, together with the hereinafter contained supporting brief, are well taken in point of fact and law, are presented in good faith and are not interposed for delay.

Dated, San Francisco, California,
June 8, 1951.

WAYNE M. COLLINS,
Counsel for Petitioners.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1950

No. 112

TADAYASU ABO, et al., etc.,
Petitioners,

vs.

J. HOWARD MCGRATH, as the Attorney General of the United States, et al.,
Respondents.

and

MARY KANAME FURUYA, et al., etc.,
Petitioners,

vs.

J. HOWARD MCGRATH, as the Attorney General of the United States, et al.,
Respondents.

BRIEF IN SUPPORT OF PETITIONS FOR WRITS OF CERTIORARI.

I.
JURISDICTION.

A. Dates of entry of judgments of District Court and Court of Appeals.

(1) The final judgments and decrees cancelling the petitioners' renunciations and the Attorney General's ap-

provals thereof, declaring them to be citizens and nationals of the United States and enjoining the defendants from restraining them of their liberty and from depriving them of their rights, privileges and immunities of citizenship were entered in the District Court on April 12, 1949. (R. 482.) The Opinion of that Court (R. 410-427) is reported in 77 Fed. Supp. 806 and its Opinion in the companion proceedings in habeas corpus is reported in 76 Fed. Supp. 664.

(2) The judgments (R. 610) and Opinion (R. 598) of the Court of Appeals for the Ninth Circuit reversing the judgments of the District Court below as to them and remanding the causes to that Court, for the purpose of enabling the defendants therein to submit to the trial Court evidence against them individually meeting or overcoming or tending to meet or overcome what it decided was the *prima facie* case established by the petitioners in the trial Court that their renunciations of United States citizenship while interned in a concentration camp by the Government were the products of coercion or duress, were rendered, filed and entered on January 17, 1951, said Opinion being reported in *McGrath v. Abo,* 186 Fed. 2d 766, and its Opinion in the companion appeals in habeas corpus being reported in *Barber v. Abo,* 186 Fed. 2d 775.

(3) The petitioners' petitions for a rehearing of their causes were filed in the Court of Appeals below on February 16, 1951, and were denied by orders of said Court on February 27, 1951. (R. 611.) Pursuant to timely orders made by that Court the issuance of its mandates in the causes were stayed to and including June 11, 1951, pending the docketing of petitioners' petitions for certiorari in this Court and thereafter until this Court finally disposes of the cases.

B. Statute under which jurisdiction is invoked.

The jurisdiction of the Supreme Court of the United States is invoked herein by virtue of the provisions of 28 USCA, Sec. 1254 (1), which confers upon it jurisdiction to review the judgments in question by writs of certiorari.

C. Statement of grounds on which the jurisdiction of the Supreme Court is invoked.

In the District Court and in the Court of Appeals, as in these petitions, there was drawn into issue by the petitioners (a) the validity of their renunciations of United States nationality, made under the provisions of 8 USCA, Sec. 801 (i), and Secs. 316.1 to 316.9, inclusive, of Title 8, Nationality Regulations as United States born resident citizens while they illegally were interned by the United States Government, under Executive Orders 9066 and 9102, in a wartime concentration camp simply because they were citizens of Japanese ancestry, (b) the validity of their internment under an asserted authority of the Alien Enemy Act, 50 USCA, Sec. 21, et seq., and (c) their threatened removal to Japan by the Attorney General as though they were alien enemies dangerous to our security and subject to such a removal under an asserted authority of Presidential Proclamation No. 2655 (10 F.R. 8947) of July 14, 1945.

In the District Court and Court of Appeals below petitioners contended that their said renunciations, internment and threatened removal to Japan were illegal and void for being the products of their evacuation from the West Coast by a military commander, the long illegal detention forced upon them by the Government following their evacuation and the duress which it imposed upon them and to which it subjected them, all in violation of the provisions of the 4th, 5th, 6th, 8th, 9th, 10th, 13th and 14th Amendments and to Secs. 1, 8 and Clause 3 of Section 9

of Article I, Sec. 1 of Article III, subds. 1 and 3 of Sec. 3 of Article III and subd. 1 of Sec. 2 of Article IV of the Constitution.

Petitioners' chief contentions so drawn into issue were and are as follows: Their renunciations of United States nationality were void for being the direct and proximate result of the duress in which they were held and to which they were subjected by the United States Government. Their internment by the Government and their threatened removal to Japan were void for said reasons. The renunciation statute, 8 USCA, Sec. 801 (i) and Secs. 316.1 to 316.9, inclusive, of Title 8, *Nationality Regulations,* on their faces and as applied to them, the provisions of the Alien Enemy Act, 50 USCA, Sec. 21, et seq., under which they were held in internment, as applied to them by the Attorney General, and Presidential Proclamation No. 2655, under which the Attorney General destined them for removal to Japan, on its face and also as applied to them, were unconstitutional and void for depriving them of due process in violation of the 5th Amendment and for being a cruel and unusual punishment forbidden by the 8th Amendment, for constituting an invasion of their right to be secure in their persons against unreasonable seizures prohibited by the 4th Amendment, for being *ex post facto* laws and bills of attainder forbidden by Clause 3 of Section 9 of Article I of the Constitution.

In substance the District Court below found from the evidence submitted by both sides that each renunciation was the direct result of one or more of the following duress factors which invoked the fear in them during their unconstitutional internment which caused them to renounce, viz., (1) the internal pressure, (2) parental pressure, (3) fear of community hostility on release which led to renunciation to insure prolongation of detention, (4) fear that the Government would deport them in any event

and that, unless they renounced, they would be subject to reprisal on arrival in Japan and (5) mass hysteria developed from evacuation, loss of home, isolation from the outside world, concentration in a guarded, overpopulated camp with little occupation, inadequate and uncomfortable living accommodations, dreary and unhealthy surroundings and climatic conditions producing neuroses built on fear, anxiety, resentment, uncertainty, hopelessness and despair of eventual rehabilitation. In consequence, it ordered the renunciations cancelled. (See Opinion, R. 410 at 416, Interlocutory Judgment and Decree, R. 430, Findings of Fact, R. 460, and Final Decrees, R. 482.)

The Court of Appeals, in reversing judgments as to the petitioners herein, disregarded in their entirety each of the contentions petitioners made as to the invalidity of their renunciations on constitutional grounds, and, therefore, assumed and *sub silentio* decided them to be valid unless, however, it had been proved that they were individually coerced. It further held that the evidence adduced in the trial Court established *prima facie* cases, by a "*rebuttable presumption*" of coercion, that their renunciations (with the exception of those of 83 petitioners who were in camps other than Tule Lake when they renounced and of whom only 60 were adults at the time and hence are petitioners herein) individually had been coerced. (R. 606.) While its Opinion recognized that the rebuttable presumption was sufficient to sustain the findings of fact and judgments below, it, nevertheless, reversed the judgments of the District Court as to petitioners and ordered the causes remanded to the District Court to enable the defendants therein to introduce evidence meeting or tending to meet or overcome the rebuttable presumption which established the *prima facie* cases. It did this apparently because it misconstrued the provisions of the stipulation and order submitting the causes, the

Opinion of the trial Court and its interlocutory orders, judgments and decrees and primarily because it disregarded the Orders Striking those Designations and the findings of the District Court made on the evidence on which those orders striking those designations were based, making no reference whatever in its Opinion to these important matters by means of which a serious miscarriage of justice has been occasioned to them by the Court of Appeals' decisions. In so doing the Court of Appeals exceeded its lawful jurisdiction and invaded the exclusive jurisdiction of the District Court.

D. Cases believed to sustain the jurisdiction.

(1) *Ex parte Endo,* 323 U.S. 283, which reviewed habeas corpus proceedings testing the validity of a government detention order detaining a citizen during wartime in a relocation center following her evacuation and held the order void.

(2) *Korematsu v. U. S.,* 323 U.S. 214, 221-2, which reviewed a conviction for violation of a civilian exclusion order and declared that the serious constitutional issues raised by the detention of citizens of Japanese ancestry in relocation centers following their evacuation could be tested when the validity of a detention order was in issue.

(3) *Duncan v. Kahanamoku,* 327 U.S. 304, 318, which held that basic constitutional rights are not suspended by operation of war. See also, *U. S. v. L. Cohen Grocery Co.,* 255 U.S. 81, holding that the 5th Amendment's guaranty of due process is not suspended by war.

(4) *Yick Wo v. Hopkins,* 118 U.S. 356, which held that the denial of equal justice through class legislation is within the prohibition of the Constitution.

(5) *Bram v. U. S.,* 168 U.S. 532, 549, which held that statements illegally induced during detention were void

and also held that, in a criminal case, the burden of first proving that a statement obtained under such circumstances is voluntary rests upon the Government as a condition precedent to its introduction into evidence.

(6) *Weeks v. U. S.*, 232 U.S. 383, which laid down the principle that documents and statements obtained by Government agents from a person unlawfully detained are illegal for being "the fruits of wrongdoing".

(7) *McNabb v. U. S.*, 318 U.S. 322, which decided that statements taken by Government agents from a person held in an illegal detention is illegal, whether the confession is the result of torture, physical or psychological.

(8) *Upshaw v. U. S.*, 335 U.S. 410, 413-4, which decided that statements taken by Government agents from a person during an illegal detention were void.

(9) *U. S. v. U. S. Gypsum Co.*, 333 U.S. 364, 394-5, in which this Court reviewed the question of the power of an Appellate Court to revise findings of fact made by a District Court and marked out the limits of that authority.

II.

STATUTES, REGULATIONS AND PROCLAMATION, AND RULE OF COURT, THE APPLICATION, CONSTRUCTION AND VALIDITY OF WHICH ARE INVOLVED HEREIN.

The relevant provisions of the renunciation statute, 8 USCA, Sec. 801(i), the Alien Enemy Act, 50 USCA, Sec. 21, et seq., the procedure for renunciations hearings, 8 Nationality Regulations, Secs. 316.1 to 316.9, inc., and Presidential Proclamation No. 2655, and Rule 52(a) F.R.C.P., the application, construction, validity or constitutionality of which are involved herein, are set forth in the petitions for writs of certiorari herein and, for the sake of brevity, are not duplicated in this brief.

III.

STATEMENT OF FACTS.

The Summary and Short Statement of the Matters Involved which is set forth in the petitions for certiorari to which this brief is annexed hereby is incorporated herein by reference as petitioners' Statement of Facts for the sake of brevity and to avoid repetition.

IV.

SPECIFICATION OF ERRORS.

In reversing the judgments of the District Court below and remanding the causes as to the petitioners to that Court for further proceedings in conformity with its Opinion the United States Court of Appeals for the Ninth Circuit erred in each and all of the following particulars, hereby assigned as error, to-wit:

1. In holding that the petitioners' renunciations made under 8 USCA, Sec. 801(i), were not void because that statute on its face and as applied to them did not discriminate against them for racial reasons and did not deprive them of the due process of law guaranteed to them by the 5th Amendment.

2. In holding that the renunciations of the petitioners were not void for having been the fruits of illegal detention and wrongdoing by the Government and its agents prohibited by the due process guaranty of the 5th Amendment and also by the unlawful seizure clause of the 4th Amendment.

3. In holding that the Alien Enemy Act and Presidential Proclamation No. 2655 are still in full force and effect and are applicable to petitioners unless each sustains, on a reopening of the causes on its remanding

orders, the burden of proof of coercion against any evidence the defendants may introduce thereon.

4. In holding that the renunciations of petitioners induced and taken from them by the Government during their illegal imprisonment were not void for being prohibited by the due process clause of the 5th Amendment and also by the unlawful search and seizure clause of the 4th Amendment.

5. In holding that the respondents, as Government agents, did not have a preliminary burden in the District Court below of proving that the renunciations of the petitioners were voluntarily made.

6. In holding that the renunciation statute, 8 USCA, Sec. 801(i), on its face and as applied to petitioners was not an *ex post facto* law and a bill of attainder forbidden by Clause 3 of Section 9 of Article I of the Constitution.

7. In holding that Presidential Proclamation No. 2655 as applied to petitioners was not an *ex post facto* law and a bill of attainder forbidden by Clause 3 of Section 9 of Article I of the Constitution.

8. In holding that the taking of petitioners' renunciations during their illegal detention and treating the renunciations as a ratification of their evacuation and subsequent detention and as a ratification and validation of a prolongation of that internment and as justification for their removal to Japan did not deprive the petitioners of the due process of law guaranteed to them by the 5th Amendment.

9. In ignoring and setting aside the District Court's judgments voiding the petitioners' renunciations for having been coerced and in ignoring and setting aside that Court's findings of fact based upon substantial and overwhelming evidence of that coercion the Court of Appeals exceeded its own jurisdiction, invaded the exclusive juris-

diction of the District Court, and violated the rule forbidding Appellate Courts to set aside findings of fact which are not clearly erroneous.

10. In ignoring and setting aside the District Court's Orders Striking the Designations filed by the respondents and in ignoring and setting aside the findings of fact, which were based upon substantial and conclusive evidence, that those Designations did not conform to the type it had authorized to be filed and that they were not filed in good faith and were sham, those findings not being clearly erroneous but being clearly proper and correct, the Court of Appeals exceeded its own jurisdiction, invaded the exclusive jurisdiction of the District Court, and violated the rule that findings of fact which are not clearly erroneous may not be disturbed by Appellate Courts.

11. In setting aside the findings of fact and judgments of the District Court which decreed the petitioners' renunciations were void as the products of coercion when the Court of Appeals itself found that petitioners had established *prima facie* cases of that coercion through the medium of a "rebuttable" presumption and which it recognized had not been rebutted, the Court of Appeals exceeded its own lawful jurisdiction, invaded the exclusive jurisdiction of the District Court and violated the rule forbidding the setting aside of findings of fact which are not clearly erroneous.

12. In attempting to dictate to the District Court, in advance of evidence being proffered, what weight it must attach thereto the Court of Appeals exceeded its power and encroached upon the exclusive jurisdiction of the District Court.

V.

SUMMARY OF ARGUMENT.

The petitioners contend that their renunciations are void as a matter of law, as also of fact, for being the product of their evacuation and subsequent unconstitutional detention for several years by the Government, without hearings being given them on the cause, reason or necessity for that mistreatment and without an opportunity to be liberated therefrom except through the medium of renouncing citizenship and then becoming subject to removal to Japan or of renouncing citizenship to make certain they could remain in the protective security of a concentration camp to escape lynch law and mob violence in communities hostile to them if they forcibly were relocated by the Government. They also contend that, as a matter of fact as also of law, they are void, as the District Court decided and found on the overwhelming preponderance of the evidence, for having been the product of fear which caused them to renounce as the result of duress and coercion consequent upon their imprisonment.

They also contend that the renunciation statute, 8 USCA, Sec. 801(i), and Presidential Proclamation No. 2655, on their faces and also as applied to them, are unconstitutional and void for depriving them of the due process of law guaranteed to them by the 5th Amendment and also for being *ex post facto* laws and bills of attainder forbidden by Clause 3 of Section 9 of Article I of the Constitution. They also contend that the Alien Enemy Act and Presidential Proclamation No. 2655 do not apply to them and also that they no longer are in force and effect.

They also contend that the Court of Appeals, in reversing the judgments of the District Court as to them and reopening the causes to permit the defendants in the District Court to submit to the trial Court evidence against

them individually meeting or tending to meet or overcome what the trial Court held was proved by an overwhelming preponderance of the evidence but which it held were *prima facie* cases established by them, through the medium of a "rebuttable presumption" that their renunciations were void for being the products of duress and coercion, exceeded its lawful jurisdiction, invaded the exclusive jurisdiction of the District Court, and exercised an unlawful supervisory power and control over the District Court's findings of fact and judgments not lodged in it by 28 USCA, Sec. 2106, or any other statute, and violated the rule prohibiting an Appellate Court from disturbing, revising or setting aside findings of fact which are based upon substantial supporting evidence and which are not clearly erroneous. They also contend that the Court of Appeals exceeded its authority in attempting to dictate to the District Court what weight it must attached to evidence if and when it might be introduced on a reopening of the causes.

VI.

ARGUMENT.

(1)

ALIEN ENEMY ACT AND PRESIDENTIAL PROCLAMATION NO. 2655 HAVE LOST THEIR EFFICACY AND IN CONSEQUENCE, AUTHORITY TO INTERN AND REMOVE HAS EXPIRED.

The Alien Enemy Act, 50 USCA, Sec. 21, et seq., which authorizes the detention and removal of alien enemies no longer is in force and effect. In consequence, Presidential Proclamation No. 2655 under which the Attorney General seeks to justify the internment and removal of petitioners to Japan has lost its efficacy.

On June 21, 1948, this Court, in *Ludecke v. Watkins,* 335 U.S. 160, reached the conclusion that as at that time the

Alien Enemy Act still was in force and effect. However, approximately six years now have elapsed since August 10, 1945, when the Japanese Government sued for peace and surrendered on the general terms announced by the Allied Powers at the Potsdam Conference and V-J Day, September 2, 1945, when the formal surrender took place. The end of hostilities was proclaimed formally by President Truman on December 31, 1946.

It is true that no peace treaty with Japan has been entered into and that neither the President nor Congress has made an official declaration that the state of "declared war" mentioned in the Alien Enemy Act, 50 USCA, Sec. 21, has been terminated. However, it is a fact that the war with Japan has ended. Japan no longer is a belligerent or even an enemy nation. She is occupied technically by an Allied army of occupation but, in reality, she now is a friendly nation. Her wartime government has disappeared and her armed might has been destroyed. Inasmuch as the Japanese people no longer are hostile to us but are submissive to our occupation and are friendly to us Japan cannot be said to present any threat to our security. In view of these facts it is difficult, if not impossible, to understand how any truthful assertion could be made that resident Japanese nationals, much less resident renunciants of Japanese ancestry, present any threat to our security warranting removal from our midst.

The attempt of the Attorney General to keep the petitioners interned and to remove them to Japan has no relevancy to any security measure. It is nothing but an attempt to punish them for what the Attorney General would have us view as a suspected past mental adherence on their part to the principles of the Japanese Government without any hearing at any time whatever having been given them on any such spurious matter. The Alien

Enemy Act never was intended or designed to be utilized as a *punitive* measure but simply as a *security* measure.

The authority to detain and remove alien enemies under the Alien Enemy Act, like martial law, is invoked by an overwhelming public necessity and necessarily must end when the necessity ends which invoked it. It would not seem to require a formal declaration to terminate it for such a prerequisite would enable it to be used arbitrarily and capriciously by executive agencies long after the conditions which invoked it have terminated. The rule laid down by this Court, in discussing martial law powers, in *Ex parte Milligan,* 4 Wall. (U.S.) 2, that "As necessity creates the rule, so it limits its duration" would seem applicable as the rule for determining the duration of the efficacy of the Alien Enemy Act. Inasmuch as the advent of war invoked the Act and the actual war long ago terminated the Act has lost its efficacy. In consequence, the internment and threatened removal of the petitioners to Japan are void as deprivations of the due process of law guaranteed to them by the 5th Amendment.

Further, if a state of war with Japan still exists, expatriation to Japan or removal thereto under the Alien Enemy Act would be unlawful, both types of departures being prohibited as acts of treason by Section 3 of Article III of the Constitution for the deportee on arrival at Japan would be enabled to bear arms against us.

If it is the contention of the Attorney General that by renunciation an imprisoned citizen is transformed into an alien enemy and that it constituted a form of adherence to the enemy we direct attention to the fact that the Government induced the renunciations and, in consequence, its own action was treasonable and constituted an "entrapment" which rendered the government's action void and the petitioners' renunciations invalid and unpunishable. See *Woo Wai v. U. S.* (CCA-9), 223 Fed. 412. For said

reasons the renunciation statute, as applied to the petitioners, is unconstitutional and void for authorizing adherence to the enemy in violation of the treason clause, Sec. 3 of Article III of the Constitution.

Further, either continued internment or removal under the Alien Enemy Act and Presidential Proclamation No. 2655 at this late date, some six years after the cessation of hostilities, inflicted upon petitioners as a consequence of renunciation, without hearings being given them, is nothing but quasi-criminal if not criminal punishment inflicted in the absence of crime and, in consequence, should be protected by the same safeguards the Constitution erects against coerced waivers of basic rights in criminal cases. See *Weeks v. U. S.*, 232 U.S. 383; *Upshaw v. U. S.*, 335 U.S. 410, 413.

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(2)

THE RENUNCIATION STATUTE AND PROCLAMATION NO. 2655 ARE VOID FOR DEPRIVING PETITIONERS OF DUE PROCESS OF LAW AND FOR BEING EX POST FACTO LAWS AND BILLS OF ATTAINDER.

THE STATUTE IS REPUGNANT TO THE DUE PROCESS GUARANTY.

The renunciation statute, 8 USCA, Sec. 801(i), never was a law of general nature having a uniform operation. It never was intended or utilized as such a law. It was enacted by Congress at the special instance and request of the Justice Department for the disclosed sole purpose of procuring the renunciations of citizens of Japanese ancestry then detained in our concentration camps simply to insure a prolongation of their internment. See affidavit of John L. Burling, once Director of the Alien Enemy Control Unit of the Justice Department, R. 158-161, stating that its passage was recommended by the Attorney

General to authorize the continuing detention of American citizens not charged with crime and not subject to martial law "without violating the Constitution".

The statute was utilized for that exclusive purpose by the Attorney General. During their detention at the Tule Lake Center 5,371 native born citizens of Japanese ancestry of the age of 18 years and upward signed renunciation applications in 1945. In eight other like concentration camps only 151 similarly detained and abused citizens of like ancestry signed like applications. Justice Department agents were sent post haste to the camps to invite renunciations and to conduct hearings thereon. They conducted those pseudo-hearings behind the closed doors of examining rooms from which all persons were excluded except the Government agents and the detainee who was to be examined. Thereafter they made recommendations to the Attorney General to approve the renunciations so obtained. No like renunciations were invited, solicited or obtained from any other citizens of different ancestral type whether or not detained by the Government. So far as can be ascertained, the Justice Department keeping renunciation records confidential and secret, no renunciations arose from any source outside those concentration camps.

When the renunciations had been procured from these imprisoned citizens and the Attorney General thereafter had time to approve them the renunciation statute, 8 USCA, Sec. 801(i), was rendered *inoperative* by the Joint Resolution of Congress of July 25, 1947, 61 Stat. 454, apparently on the recommendation of the Attorney General. In this manner, the operation of this statute, which on its face purports to be in full force and effect during the period in which we are engaged "in a state of war", was limited to but a brief portion of that period. In consequence, it is nothing but a handy loaded weapon kept on

the shelf for executive use when the caprice of the moment demands. Inasmuch as it was nothing but discriminatory class legislation as designed, utilized and applied only to illegality imprisoned citizens of Japanese ancestry to the exclusion of other citizens it never was a general law having a uniform operation. It is special discriminatory class legislation which deprived the petitioners of the due process of law guaranteed to them by the 5th Amendment in violation of the rule of *Yick Wo v. Hopkins,* 118 U.S. 356; and *Yu Cong Eng v. Trinidad,* 271 U.S. 500, 528.

DENIAL OF DUE PROCESS AT RENUNCIATION HEARINGS VOIDS THE RENUNCIATIONS.

This Court has declared that the Courts must "indulge every reasonable presumption against waiver" of fundamental constitutional rights. *Aetna Insurance Co. v. Kennedy,* 301 U.S. 389, 393. It has also declared that the Courts "do not presume acquiescence in the loss of fundamental rights". *Ohio Bell Telephone Co. v. Public Utilities Commission,* 301 U.S. 292, 297, and *Johnson v. Zerbst,* 304 U.S. 458, 463. Statements made during detention by the Government or its agents by a person who is denied his constitutional right to the independent advice and assistance of counsel or of friends are illegal and inadmissible in evidence for violating the due process guaranty. See *Malinsky v. N. Y.,* 324 U.S. 401, 405; and *White v. Texas,* 310 U.S. 530. If an accused person, denied the assistance of counsel, is not informed by the Court of the irrevocability of his plea to a charge and the consequences of that plea he has been deprived of due process and the plea is void. See *DeMeerleer v. Michigan,* 329 U.S. 663, 665.

In consequence, we urge that the renunciations of the petitioners made during their illegal detention were void for depriving them of the due process of law guaranteed to them by the 5th Amendment because those hearings were held behind closed doors by the Government agents

and they were deprived of the benefit of witnesses and friends and were denied the independent advice of counsel and friends and were not informed of the irrevocability of renunciation or of its consequences. (R. 177, 214.)

THE STATUTE AND PROCLAMATION ARE FORBIDDEN EX POST FACTO LAWS AND BILLS OF ATTAINDER AND THE PROCLAMATION IS REPUGNANT TO THE DUE PROCESS CLAUSE.

The Attorney General contends that renunciations under the statute automatically converted the petitioners into alien enemies and rendered them subject not only to a continuation of their detention under the special name of "internment" but to removal to Japan under Presidental Proclamation No. 2655. He issued removal orders against them upon the arbitrary assumption that they were alien enemies dangerous to the public safety because of a like arbitrary assumption they had adhered to an enemy Government or to the principles thereof. He did this under the assumption that such a capricious authority was conferred upon him by the provisions of Presidential Proclamation No. 2655. (However, there is nothing in that proclamation that would indicate the President intended it to be applied to resident renunciants and, in consequence, we submit that the removal orders were not authorized by the President.) No hearing at any time whatever was given any of them on the cause, reason or necessity for the issuance of removal orders or on the question whether any of them in fact was dangerous to our security or whether any of them at any time whatever had adhered to an enemy government or to the principles thereof. In consequence, the Proclamation, as applied to petitioners, and the removal orders are void for depriving them of a hearing thereon, in violation of the due process guaranty of the 5th Amendment. In addition thereto, the statute and Proclamation as applied to the petitioners by the Attorney General are void for being *ex post facto* and

retroactive laws and bills of attainder forbidden by Clause 3 of Section 9 of Article I of the Constitution because they punish the petitioners, by internment, outlawry and banishment for a purported and unproven past state of mind arbitrarily asserted to have constituted a past adherence to an enemy government or to the unknown principles thereof.

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(3)

INTERNMENT AND BANISHMENT OF PETITIONERS ARE PROHIBITED BY FIFTH AND EIGHTH AMENDMENTS.

Punishment in the form of internment and also in the form of banishment or exile, sought to be justified as the legal consequence of renunciation under 8 USCA, Sec. 801(i), but inflicted upon them solely for the irrelevant reason they had been evacuated and thereafter imprisoned for several years in a concentration camp simply because they were of Japanese ancestry renders the statute void on its face and also as applied to them for being an *ex post facto* law and also a bill of attainder, both being prohibited by Clause 3, Section 9 of Article I of the Constitution.

It would seem also that the internment and also the banishment of the petitioners to Japan are types of *infamous punishment* inflicted upon them, in the absence of crime on their part, simply because of their color or race and, as such, are forbidden by the 5th Amendment. See *U. S. v. Moreland,* 258 U.S. 433; also opinion of Mr. Justice Brewer in *U. S. v. Ju Toy,* 198 U.S. 253, at 269-270, declaring banishment to constitute a *cruel and unusual punishment* forbidden by the 8th and 5th Amendments. See also, *Ex parte Wilson,* 114 U.S. 417, 428.

(4)

THE RENUNCIATIONS ARE VOID BECAUSE (A) THEY WERE MADE WHILE PETITIONERS WERE HELD IN AN ILLEGAL DETENTION; (B) WERE INDUCED BY THE GOVERNMENT, AND (C) BECAUSE THEY WERE THE FRUITS OF WRONGDOING BY THE GOVERNMENT, WHICH DEPRIVED PETITIONERS OF DUE PROCESS OF LAW.

A. RENUNCIATIONS ARE VOID FOR BEING MADE DURING AN ILLEGAL DETENTION.

Their renunciations were taken from the petitioners during the time they were illegally imprisoned by the Government and had been deprived of all citizenship rights and had neither opportunity nor prospect of release. (See *Ex parte Endo,* 323 U.S. 283, declaring illegal that detention. See also, *Korematsu v. U. S.,* 323 U.S. 214, reviewing the history of the brutal program. See also, *Duncan v. Kahanamoku,* 327 U.S. 304, deciding that basic constitutional rights guaranteed citizens are not curtailed by operation of war even where it is contended a form of martial rule justifies the curtailment.) The renunciations were taken for the admitted governmental purpose for which 8 USCA, Sec. 801(i) was enacted, i.e., to insure, in the absence of martial law, a prolongation of their unconstitutional imprisonment "without violating the Constitution". (See R. 160.) The contention of the Attorney General is that by renunciation they became alien enemies, subject to internment and removal under the Alien Enemy Act and Presidential Proclamation No. 2655. That novel contention is simply that the Government deliberately induced the confined citizens to renounce so that it could treat their renunciations as a ratification of their forced evacuation from their homes and of their subsequent long imprisonment in concentration camps and thereby validate that illegal detention up to the date the renunciations were approved and their internment since then and justify their removal to Japan. If factual duress cannot be made

the subject of ratification (5 *Williston on Contracts,* Rev. Ed., p. 4548, Sec. 1626) it appears obvious that an unconstitutional detention cannot be converted into a lawful one by the method of having the victims submit to an induced ratification of that past detention or to validate a prolongation of it under the name of internment. In consequence, it is apparent that the statute and proclamation, on their faces and also as applied to petitioners, deprived them of the due process of law guaranteed to them by the 5th Amendment and that their renunciations are void for said reasons.

B. RENUNCIATIONS ARE VOID FOR BEING ILLEGALLY INDUCED BY GOVERNMENT.

The renunciations were *induced* from the petitioners by the Government, as above stated, for the admitted governmental purposes of insuring a continuation of their illegal detention and thereby to have its victims ratify and validate their evacuation and years of unconstitutional detention and ratify, in advance, a continuing internment and final removal to Japan. In addition thereto, the Government induced the renunciations for such purposes, at a time during that unconstitutional detention, when each petitioner was faced with making a choice of renouncing either to secure liberation from that imprisonment by being transported to Japan or to remain in the protective security of a concentration camp to escape lynch law and mob violence in communities hostile to them if they were forcibly relocated in this country. However, a choice between Scylla and Charybdis is not a free choice but a coerced choice. Documents or statements procured during an illegal detention by inducement are illegal and void for violating the due process guaranty of the 5th Amendment and also the unlawful search and seizure clause of the 4th Amendment. See *Bram v. U. S.,* 168 U.S. 532.

C. RENUNCIATIONS ARE VOID FOR BEING THE FRUITS OF WRONGDOING BY THE GOVERNMENT.

In consequence, the renunciations taken by the Attorney General from the petitioners while they were held in concentration camps, pursuant to the admitted governmental objectives for which the renunciation statute was enacted, i.e., simply to insure their continued detention or to remove them to Japan, are illegal on their face for being "the fruits of wrongdoing" by the Federal Government and its agents which violate the due process guaranty of the 5th Amendment and also the unlawful search and seizure clause of the 4th Amendment. See principle announced in *Weeks v. U. S.*, 232 U.S. 383; *Upshaw v. U. S.*, 335 U.S. 410; *McNabb v. U. S.*, 318 U.S. 332; and *Lustig v. U. S.*, 338 U.S. 74.

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(5)

THE COURT OF APPEALS EXCEEDED ITS JURISDICTION IN SETTING ASIDE FINDINGS OF FACT AND JUDGMENTS OF DISTRICT COURT WHICH WERE NOT CLEARLY ERRONEOUS BUT WERE ENTIRELY PROPER AND SUPPORTED BY OVERWHELMING EVIDENCE THAT EACH RENUNCIATION WAS CAUSED BY DURESS.

A. EVIDENCE UPON WHICH CASES WERE SUBMITTED TO TRIAL COURT FOR DECISION ON THE MERITS OF THE CAUSES ASIDE FROM MATTERS OF WHICH COURT TAKES JUDICIAL COGNIZANCE.

After some eight months of negotiation and discussion the parties decided to submit the causes for decision on the merits on the evidence which previously had been submitted on the motions for judgment on the pleadings and the motions and cross-motions for summary judgment. Both parties had produced thereon and submitted all the evidence they desired to submit, realizing that if the facts established or failed to establish the renuncia-

tions were directly and proximately caused by duress or coercion the parties would be bound by those findings. The actual risk was run by the plaintiffs therein who had everything to lose while the defendants had nothing at stake. The parties deemed that the evidence which had been submitted to the Court, coupled with facts of which the Court could take judicial cognizance, was adequate for a complete determination of the factual and legal issues.

The causes were submitted to the District Court on their merits on October 10, 1947, under a Stipulation (R. 408(a), and Court order (R. 408(b)), which provided that the *proofs be closed.* That Stipulation reads as follows:

"STIPULATION.

It is stipulated between the parties hereto that this case be submitted for decision to the Court on the cause, that is, on the merits and the present record as it stands, including any evidence by way of affidavits and exhibits submitted on the respective motions for summary judgment and for judgment on the pleadings that is legally admissible as competent, relevant and material evidence against the objections and exceptions made thereto and against the motion made to suppress the same, and *that the proofs be closed* provided, however, *that if the Court deems it necessary for a proper decision of any factual or legal issue or issues* involved in this case as to any particular plaintiff or plaintiffs, *the Court shall order the production of further or additional evidence thereon* and, in such an event, the parties hereto shall have the same rights in respect to the introduction of such further or additional evidence as to any such plaintiff or plaintiffs as they would have had if they had not entered into this stipulation.

Dated: October 10, 1947." (Emphasis supplied.)

That Stipulation was entered into for the precise purpose of obtaining a final determination of the issues involved and thereby avoiding thousands of individual hear-

ings which would be impracticable and would tie up the District Court for years with litigation. The stipulation was entered into in both causes following a number of conferences between counsel for the parties and the trial judge.

By the terms of that Stipulation the evidence submitted by the petitioners, in support of their contention that the renunciations were caused by factual duress, consisted of the documentary evidence in affidavit form which had been submitted on their motions for summary judgments and on the pleadings and specified at R. 223-224 to consist of the following: (1) the complaint (R. 2) with its Exhibit 1 (R. 32); (2) supplements thereto (R. 62) with Exh. 2 (R. 75) and Exh. 3 (R. 82); (3) the amended complaints (R. 92), the said complaints, supplements thereto and amended complaints each being specifically filed as affidavits *"for and on behalf of each and all"* of the plaintiffs and *"in lieu of filing separate affidavits by each individual plaintiff"* (see R. 224); and the affidavits at R. 225, 255, 267, 290 and 301. No objections or exceptions were taken by the defendants therein to the said evidence. In addition thereto, the plaintiffs therein delivered to the District Court the following documents of which it was authorized to take judicial notice, viz., "Final Report" of General DeWitt; H.R. 1911; H.R. 2124; two Volumes of H.Res. 113, and several War Relocation Authority reports, all of which have been transmitted to this Court.

Under the Stipulation the following documentary evidence was introduced on behalf of the defendants therein, viz., the affidavits at R. 147, 210, 213, 216, 219, 324, the affidavit of Thomas M. Cooley II, filed December 5, 1946 (R. 514) and its exhibits. In addition thereto, there was filed with that Court a copy of "The Spoilage", a book by Dorothy S. Thomas and Richard Nishimoto, which also has been transmitted to this Court.

The petitioners herein filed objections and exceptions to and motions to strike (R. 318, 397-8) defendants said documents and a motion to suppress evidence illegally obtained. (R. 397 at 400.)

B. THE DISTRICT COURT FOUND FROM OVERWHELMING EVIDENCE THAT THE RENUNCIATIONS WERE CAUSED BY DURESS.

On April 29, 1948, the Opinion of the trial Court (R. 401), reported in 77 Fed. Supp. 806, was handed down. That Court found that there was no actual conflict in the evidence that duress had caused the renunciations—the conflict, as the trial judge found (R. 415), was simply which duress factors were primary and which subordinate as to their effect and impact upon petitioners. As a matter of fact, the affidavit of John L. Burling, once the Director of the Alien Enemy Control Unit of the Justice Department, had tendered the whole of the Government's defense to the suits with the frank statement of the factual duress which caused the renunciations. See R. 208 where he states, in summary:

> "If these factors and this hysteria render the act of renunciation by persons detained under these circumstances void, then the renunciations are void. If the court is now to hold that the totality of the circumstances described in this affidavit constitutes coercion, then these renunciations were coerced."

In substance the District Court below found from the evidence submitted by both sides that each renunciation was the direct result of one or more of the following facts which invoked the fear in them during their internment which caused them to renounce, viz., (1) the internal pressure, (2) parental pressure, (3) fear of community hostility on release which led to renunciation to insure prolongation of detention, (4) fear that the Government would deport them in any event and that, unless they renounced, they would be subject to reprisal on arrival

in Japan and (5) mass hysteria developed from evacuation, loss of home, isolation from the outside world, concentration in a guarded, overpopulated camp with little occupation, inadequate and uncomfortable living accommodations, dreary and unhealthy surroundings and climatic conditions producing neuroses built on fear, anxiety, resentment, uncertainty, hopelessness and despair of eventual rehabilitation. See Opinion, R. 410 at 416, Interlocutory Judgment and Decree, R. 430 and Findings of Fact, R. 460.

That Opinion declared that upon the basis of the class showing made by plaintiffs an interlocutory decree be entered cancelling the renunciations and declaring the plaintiffs to be citizens of the United States. (R. 426.) It also declared that *"It may be that if the defendants were to go forward with further proof, they could present evidence that certain of the plaintiffs individually acted freely and voluntarily despite the present record facts"* and, in consequences ordered that the defendants "may have 30 days from the date within which to file a designation of any of the plaintiffs concerning whom they desire to present further evidence" and that, as to any not so designated, a final decree was to be entered. The Interlocutory Decree (R. 430 at 431) provided that if any such designations were made they were to be made *"in an exercise of good faith"*.

C. THE TRIAL COURT DID NOT ORDER DESIGNATIONS TO BE FILED OR THE PRODUCTION OF FURTHER OR ADDITIONAL EVIDENCE.

We direct attention to the fact that the trial Court *did not deem* it necessary to order the production of further or additional evidence as to any plaintiff or plaintiffs. It *did not order the production of further or additional evidence* as to any particular plaintiff or plaintiffs. *It did not order any designations to be filed.* Neither the Stipu-

lations submitting the causes (R. 408(a)) nor the Order of Court made thereon (R. 408(b)) were ever nullified or set aside by the trial Court.

The trial Court's Opinion giving the defendants that time within which to designate *certain of the plaintiffs* against whom they might wish to present further evidence *is not an order* to them to do so and is not even a direction to them to do so as against certain plaintiffs, all plaintiffs, or any plaintiff. It merely gave them an opportunity to designate *certain,* not all, plaintiffs, conditioned on strict compliance with the proviso in the Interlocutory Decree, at R. 431, that any such Designation that might be made must be made *"in an exercise of good faith"*, and must be such a Designation as was contemplated and understood might be made. Neither the Opinion nor the Interlocutory Decree can be construed to evince an intention that the trial Court designed them to enable the defendants to convert the Stipulations and Orders submitting the causes into nullities or to enable them to reopen the causes as to all the plaintiffs. Every intendment is against any such absurd construction.

D. THE DESIGNATIONS WITH THEIR OFFERS OF PROOF.

Thereafter the defendants obtained a series of Court Orders extending their time to file such designations for a period of ten (10) months. Thereafter, on February 25, 1949, they filed purported Designations (R. 549, R. 544). The fact that these spurious designations were not even genuinely intended to constitute designations in conformity with the Court's permission given the defendants to designate clearly is demonstrated by the fact that they were lists not of a certain or of a few but of all of the 4410 plaintiffs in the two causes. The lists divided the plaintiffs into various classifications. One of these classifications, Exh. XXI-1 (R. 559), admits that the

renunciations of the eight (8) plaintiffs there named had not been approved. Another, Exh. XXII-I (R. 559) admits that the eight (8) plaintiffs there named were mentally incompetent to execute a binding contract at the time they renounced. (The Court of Appeals, however, affirmed the judgments of the District Court as to the latter.)

The designations also contained statements of what generally would be offered in proof of the various classifications of plaintiffs. No permission had been sought or granted by the District Court authorizing the tender of any offers of proof. The Stipulation submitting the causes provided that the "proofs be closed" and the defendants thereby waived offers of proof. We direct attention to the fact that the defendants had from October 14, 1946, when plaintiffs' motions for summary judgments were served on defendants and filed below (R. 146), to October 10, 1947, when the parties entered into the Stipulations (R. 408a) submitting the causes on the merits, within which to submit to the trial Court the very evidence to which their offers of proof refer. They declined to do so because (1) the issues of factual duress and coercion as they affected each plaintiff already had been tendered by ample evidence, in the form of affidavits, pleadings stipulated to be used as and to be considered as though they had been made and filed by each plaintiff on his or her own behalf, and matters of which the trial Court might take judicial cognizance; (2) the introduction of voluminous individual records and matters pertaining to each plaintiff would serve no purpose except to clutter up the Court records. Further, they recognized that the Government could not introduce statements and requests made by the plaintiffs during their illegal detention because the Government could not sustain its preliminary burden of first establishing that they were volun-

tarily made under the rule laid down in *Bram v. U. S.*, 168 U.S. 532, 549.

Further, all the matters specified in those offers of proof contained in the designations had been tendered in the evidence submitted to the Court when the causes were submitted to that Court for decision on the merits and had been considered, weighed and passed upon by the District Court in favor of the plaintiffs and against the Government. It had already found from the overwhelming preponderance of the evidence that membership in organizations and requests to be sent to Japan were the results of the unconstitutional detention and coercion. It had found that being a Kibei, having received some education in Japan, having been suspected of disloyalty and being under a removal order had no relevancy except to explain the reason for evacuation, detention and internment. The offers of proof contained in the Designations specified nothing that had not already been tendered by the evidence and nothing that had not already been considered by the trial Court and been resolved in favor of the plaintiffs. See Order Striking Designations at R. 457-8 so stating.

Because these evidentiary matters had been resolved by the trial Court in favor of the plaintiffs on adquate evidence these issues should not be reopened simply to satisfy the whims of the Justice Department. The conditional permission given to the defendants by the trial Court to go forward with further proof as to certain plaintiffs (R. 426-7) did not authorize the reopening of issues which already had been decided in favor of plaintiffs.

The trial Court had found that those renunciants who, despite the coercion, acted freely and voluntarily in renouncing were not in the suits. See, Opinion (R. 415), which states, "However, these are not the renunciants who

are here seeking restoration of citizenship. Those who did act freely were members of the pro-Japanese organizations at Tule Lake, who have already been repatriated to Japan in accordance with their express wishes." We direct attention to the fact that this clearly referred to the citizens in the group of 62, mentioned in the Burling affidavit (R. 166), none of whom were in the suits or believed to be or intended to be included therein. Inasmuch as their names were not supplied by the Justice Department the trial Court evidently left the matter open for the Justice Department to show whether any of them might have joined in the suits. This would explain why its Opinion, at R. 426-7, gave the defendants an opportunity to designate in the first place.

The fact that some of the petitioners may have been members of the so-called pro Japanese organizations at Tule Lake had been considered by the trial Court. That fact was tendered by the affidavits. (See R. 265.) The Court had considered this matter. See its Opinion at R. 412, showing it was considered and R. 425 where it held that such members acted abnormally because of abnormal conditions not of their own making and that, by reason thereof, although they may have detrimentally affected others, they were not to be held responsible. The trial Court had considered the fact that many renunciants had been transported to Japan on their requests (R. 150) made in the concentration camp. Those requests made during unconstitutional confinement were treated by the trial judge as being a direct product of the coercion.

The fact that the defendants attached but little significance to the designations they filed containing those offers of proof is evidenced by the fact that they did not deem it necessary to have those designations printed in the transcript of record on appeal for consideration by the Court of Appeals.

E. THE DISTRICT COURT ORDERED THE DESIGNATIONS STRICKEN BECAUSE THEY DID NOT CONFORM TO ITS ORDERS, WERE NOT FILED IN GOOD FAITH AND WERE SHAM AND ITS FINDINGS THEREON WERE CONCLUSIVELY SUPPORTED BY EVIDENCE.

The plaintiffs thereupon moved to strike those Designations (R. 442) on the grounds they were not in conformity with the permission given them to designate, that they were not filed in good faith and constituted sham and prayed that orders to show cause issue to defendants requiring them to show cause why they should not be stricken from the record and final judgments and decrees be entered in favor of the plaintiffs. An Affidavit of Merits was filed in support of these motions. (R. 445.) *No counter affidavits were filed in opposition thereto.* The defendants filed returns thereto on March 7, 1949 (R. 570, R. 560), and supplemental returns thereto on March 18, 1949 (R. 583, R. 592) which, however, raised no real opposition thereto and, in reality, constituted nothing but additional designations. At the hearing on the motions on March 21, 1949, the defendants raised no real opposition to the granting of the motions. The defendants' counsel appeared and read to the Court the letter from the office of the Attorney General (R. 456-7) stating that "as strong a case can be made for sustaining the validity of the renunciations as were made in the cases now on appeal" (*Acheson v. Murakami, et al.* (CCA-9), 176 Fed. (2d) 953), and that the Attorney General "reserves the right to take a different position in the event" that case was affirmed. That judgment in the *Murakami* case holding a renunciation void for duress subsequently was affirmed by the Court of Appeals for the Ninth Circuit. In consequence, the letter should have been treated by the Court of Appeals below as an admission by the Government that it had no defense in these causes.

The District Court found (R. 457-9) on the evidence before it and on facts of which it had actual knowledge and of which it was authorized to take judicial cognizance that the Designations did not conform to the provisions of the Court's Opinion or Interlocutory Judgment and were not filed in good faith and were sham and ordered the Designations stricken from the records for good cause shown (R. 455) and a final judgment to be entered for the petitioners. Findings of Fact and Conclusions of Law (R. 461) were signed and filed April 12, 1949, and the Final Orders, Judgments and Decrees (R. 482) cancelling the plaintiff's renunciations and declaring them to be U. S. citizens and enjoining the defendants from interfering with their rights, liberties, privileges and immunities as such were entered on April 12, 1949.

F. THE COURT OF APPEALS EXCEEDED ITS JURISDICTION IN IGNORING AND SETTING ASIDE THE DISTRICT COURT'S FINDINGS OF FACT AND ORDERS STRIKING DESIGNATIONS WHICH ORDERS AND FINDINGS OF FACT WERE BASED UPON UNCONTROVERTED EVIDENCE. THOSE DESIGNATIONS WERE UNAUTHORIZED, WERE NOT FILED IN GOOD FAITH AND WERE SHAM.

The designations eventually filed some ten (10) months after the Opinion of the trial court had been handed down were neither proper, authorized nor genuine designations at all. They demonstrate, however, that the trial Court and counsel for plaintiffs had been misled into believing that if the defendants were to file designations they would be ones made and filed in an exercise of good faith and against only a few of the plaintiffs. See Motion to Strike (R. 442); Affidavit in Support Thereof (R. 455, 449), and Order Striking Designations. (R. 455-459.)

On the basis of the record the District Court's Orders Striking those Designations were entirely proper and were based upon findings of fact made on competent and substantial supporting evidence. In consequence, we sub-

mit that no jurisdiction is lodged in the Court of Appeals to ignore and to set aside those District Court Orders Striking the Designations for not conforming with its Orders, for not having been filed in good faith and for constituting sham because those Orders were made upon motions supported by affidavit and facts of which the District Court had actual as well as judicial knowledge and, as hereinabove pointed out, without any real opposition thereto on the part of the defendants. Inasmuch as the findings of fact made on evidence adduced on those motions were not clearly erroneous but were clearly correct, the Court of Appeals exceeded its jurisdiction and erred in ignoring them and setting them aside. No supervisory jurisdiction to set aside such findings of the District Court is lodged in the Court of Appeals by 28 USCA, Section 2106, or any other statute. Rule 52(a) of the *Federal Rules of Civil Procedure* forbid the setting aside of findings of fact which are not clearly erroneous. In setting them aside the Court of Appeals exceeded the limits of its lawful power marked out by this Court in *U. S. v. U. S. Gypsum Co.*, 333 U.S. 364, 394-5.

G. THE COURT OF APPEALS EXCEEDED ITS JURISDICTION IN SETTING ASIDE FINDINGS OF FACT AND JUDGMENTS OF DISTRICT COURT VOIDING THE RENUNCIATIONS FOR DURESS WHICH FINDINGS AND JUDGMENTS WERE BASED UPON OVERWHELMING EVIDENCE OF DURESS.

The District Court did not find that the evidence before it established only a "rebuttable presumption" that the renunciations were the products of coercion. It found by an overwhelming preponderance of evidence that each renunciation was caused by coercion. Its Opinion (R. 415-16) makes this unmistakably clear as also do its Findings of Fact. (R. 460 at 466-7.) Those findings are supported by substantial evidence and, as a matter of fact, there was no conflict on that issue—the only conflict, as above pointed out and as specifically stated by the Dis-

trict Court in its Opinion at R. 415-6 was as to which duress or coercion factors were primary and which subordinate in their effect and impact upon petitioners.

If the District Court had found that the evidence proved a *prima facie* case of coercion through a "rebuttable presumption" its findings of fact in favor of the petitioners still could not be set aside by an appellate tribunal because *the presumption was not rebutted* by the defendants.

The Court of Appeals found that the evidence adduced in the trial Court established *prima facie* cases by a "rebuttable presumption" of coercion that their renunciations (with the exception of those of 83 petitioners who were in camps other than Tule Lake when they renounced and of whom only 60 were adults at the time and hence are petitioners herein) individually had been coerced. (R. 606.) It recognized that the rebuttable presumption was sufficient to sustain the District Court's findings of fact and judgments. Nevertheless, it reversed the judgments of the District Court as to petitioners and ordered the causes remanded to the District Court to enable the defendants therein to introduce evidence meeting or tending to meet or overcome the rebuttable presumption which established the *prima facie* cases of coercion. *It did this because it had completely ignored the fact that the District Court had ordered the Designations stricken for not being in conformity with its order permitting proper designations to be filed, for not having been filed in good faith and for constituting sham. In addition thereto it completely ignored the findings of fact, upon which the District Court's orders striking the Designations were based, as well as the evidence thereon. It simply erroneously assumed, contrary to the record itself, that the Designations with their unauthorized offers of proof contained therein had never been stricken.* Its Opinion in the causes does not make the slightest reference to

those orders striking the Designations or to the Findings of Fact and evidence on which they were based. Because of those facts a serious miscarriage of justice has been occasioned to petitioners.

In the face of the foregoing facts, proved by the record, we submit that the trial Court did not abuse its discretionary power but acted entirely within the limits of judicial discretion in striking the Designations for good cause shown. In consequence, we submit that the Court of Appeals was bound by the record and by the findings of the trial Court on this issue. We suggest that the Court of Appeals in ignoring the record facts and the findings of the trial Court abused its judicial discretion and attempted to exercise a power and control over the District Court below which is not lodged in that Court. Because the Designations properly were stricken the plaintiffs were entitled to a final judgment. This is true whether the plaintiffs sustained their burden of proof by establishing that the renunciations were caused by duress by a preponderance of direct evidence proving the ultimate facts or simply through the operation of a presumption. In either event the plaintiffs were entitled to judgment. If the presumption theory is invoked the judgment was proper because it is the rule of the Ninth Circuit (*Department of Water and Power v. Anderson* (CCA-9), 95 Fed. (2d) 577, 583-5), that the trial judge, sitting without a jury, was required to draw the inference the renunciations were the products of coercion. If the trial Court had applied only the California rule relating to presumptions (*Pozzobon v. O'Donnell,* 1 Cal. App. (2d) 151), it attached weight to the inference, although not required so to do, because of its compelling force and accuracy in arriving at the truth.

Inasmuch as the District Court was the trier of the facts it was entitled to determine what weight to attach

to the evidence before it. Because it found from the evidence that the renunciations were the direct and proximate results of coercion or duress and its Findings of Fact thereon were based upon the overwhelming weight of the evidence and are not clearly erroneous its Findings of Fact and judgments based thereon cannot be disturbed by an appellate tribunal. Rule 52(a) of the *Federal Rules of Civil Procedure* forbids the setting aside of Findings of Fact which are not clearly erroneous. In setting aside the Findings of Fact and judgments made by the District Court which invalidated the renunciations for being the products of duress and coercion the Court of Appeals violated Rule 52(a) and exceeded the limits of its authority marked out by this Court in *U. S. v. U. S. Gypsum Co.*, 333 U.S. 364, 394-5.

H. THE COURT OF APPEALS IS NOT EMPOWERED TO DICTATE TO A DISTRICT COURT WHAT WEIGHT IT MUST ATTACH TO EVIDENCE.

The Court of Appeals went out of its way to state in its opinion, referring to the offers of proof, that "the proposed evidence as to each group, save one group of 58 plaintiffs, would overcome the presumption of coercion". That declaration, in effect, is tantamount to a direction to the District Court as to what evidentiary weight that Court must give to such evidence were it admitted. That amounts to an exercise of an arbitrary supervisory direction and control over the District Court. No power is lodged in the Court of Appeals to dictate to a District Court what weight it must attach to evidence. In consequence, by that declaration, the Court of Appeals has attempted, in advance, to regulate, supervise and control the District Court's findings and judgments and unlawfully has invaded the jurisdictional sphere of the District Court.

CONCLUSION.

These petitions present serious constitutional issues of considerable public importance. The final determination of these questions is not only a matter of concern to the petitioners whose rights are involved directly but also to the nation.

The petitions for writs of certiorari in these causes directed to the Court of Appeals for the Ninth Circuit should be granted and upon a full hearing, the judgments of that Court should be reversed and the judgments of the District Court below should be affirmed.

Dated, San Francisco, California,
June 8, 1951.

Respectfully submitted,
WAYNE M. COLLINS,
Counsel for Petitioners.

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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 112

TADAYASU ABO, MARY KANAME FURUYA, ETC., ET AL., PETITIONERS

v.

J. HOWARD MCGRATH, AS THE ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (R. 410-427) is reported *sub nom. Tadayasu Abo* v. *Clark,* at 77 F. Supp. 806; the opinion of the Court of Appeals for the Ninth Circuit (R. 598-609) is reported at 186 F. 2d 766.

JURISDICTION

The judgments of the court of appeals were entered on January 17, 1951 (R. 609-611). Petitioners' motions for rehearing were denied on February 27, 1951 (R. 611). Petitioners' time within which to file petitions for writs of certiorari was extended by orders of Mr. Justice Douglas, dated April 17 and May 14, 1951, to and including June 11, 1951 (R. 612). The petitions for writs of certiorari were filed on June 11, 1951. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Court of Appeals erred in holding clearly erroneous the findings of the District Court that all of the petitioners renounced their American citizenship through duress and coercion, and in remanding the case for a new trial on that issue.

2. Whether petitioners' renunciations of American citizenship should be set aside on the ground that they were made while petitioners were detained, allegedly in violation of the Constitution, at the Tule Lake Relocation Center.

3. Whether Section 401(i) of the Nationality Act of 1940, as amended—authorizing voluntary renunciations, within the United States, of American citizenship, during wartime—is unconstitutional on the ground that it is discriminatory or was discriminatorily applied.

STATUTE INVOLVED

The Act of July 1, 1944 (58 Stat. 677) adding subsection (i) to Section 401 of the Nationality Act of 1940 (8 U.S.C. 801(i)) reads in pertinent part:

> [A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:]
>
> (i) Making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense:

STATEMENT [1]

The Court is familiar, in general, with the events leading up to, and the reasons for, the Japanese evacuation and relocation program during World War II, and these need not be repeated here. See *Hirabayashi* v. *United States*, 320 U.S. 81; *Korematsu* v. *United States*, 323 U.S. 214; *Ex parte Endo*, 323 U.S. 283. Petitioners are persons of Japanese ancestry born in the United States who, during the war, renounced their United States citizenship, pursuant to Section 401 (i) of the Nationality Act of 1940, as amended (8 U.S.C. 801(i)) (*supra*, p. 3), while at the Tule Lake Relocation Center.

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[1] See also the Government's cross petition for a Writ of Certiorari, No. 121, this Term, pp. 6-10, 25-28.

These two proceedings to cancel these renunciations were brought after the defeat of Japan.[2]

1. *The Tule Lake Relocation Center.* The vast majority of the evacuees were sent to relocation

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[2] Since the issues raised in the *Abo* and *Furuya* cases are in substance identical, it has been stipulated not to print a separate record in the latter case (R. 598, 616). There are 4315 individual plaintiffs in the two combined causes (R. 598); the petitions for writs of certiorari were filed on behalf of 3429 petitioners (Petition, p. 2); the difference between the number of plaintiffs and of petitioners may be explained by the fact that many of the plaintiffs were not aggrieved by the decision below (R. 605-606, 608, 609); see also Petition, p. 2, fn. 1.

The respondents, apart from the Attorney General, are:

1. Frank J. Hennessy as United States Attorney for the Northern District of California. Mr. Hennessy ceased to hold office on May 14, 1951, and was on that day succeeded by Chauncey F. Tramutolo. A motion to substitute Mr. Tramutolo for Mr. Hennessy has been filed in *McGrath* v. *Abo*, No. 121.

2. Watson B. Miller, as the Commissioner of Immigration and Naturalization. Mr. Miller ceased to hold office on June 9, 1950. He was succeeded on June 10, 1950, by Argyle R. Mackey as Acting Commissioner. Mr. Mackey took office as Commissioner on April 23, 1951. A motion to substitute Mr. Mackey for Mr. Miller, in the event that the action had not abated against the latter, has been filed in *McGrath* v. *Abo*, No. 121.

3. Ivan Williams, as Officer-in-Charge of the Tule Lake Center, Newell, Medoc County. Mr. Williams ceased to hold office when Tule Lake Center was closed in April, 1946. His functions, as far as these cases are concerned, apparently were taken over by the District Director of the United States Immigration and Naturalization Service.

4. Bruce Barber as District Director of the United States Immigration and Naturalization Service for the Northern District of California.

5. The complaint was also filed against the Secretaries of State, the Treasury and the Interior and certain persons acting under their authority. The Court of Appeals dismissed the complaint as to them (R. 603); petitioners do not appear to seek a reversal on that ground.

centers in which they were interrogated in order to determine whether or not they were loyal to the United States. Those who failed to pass the test were segregated at the Tule Lake Relocation Center (R. 156-158).[3] The main reasons for segregation were requests for repatriation to Japan and the refusal to answer in the affirmative Question 28 of a questionnaire, which called for readiness to swear to unqualified allegiance to the United States and to foreswear any form of allegiance or obedience to the Japanese Emperor (R. 149-150; 570-572).[4]

It should be pointed out, however, that a considerable percentage of the population at Tule Lake[5] were not segregated for loyalty reasons, but were interned there either because they had requested permission to stay at that Center after it had been converted to a segregation center (R. 151), or because they accompanied a segregated member of their family.

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[3] Hearings before the Committee on Immigration and Naturalization, House of Representatives, 78th Cong., 2d Sess., on H.R. 2701, etc., pp. 52-58; *The Evacuated People*, A Quantitative Analysis, U. S. Dept. of the Interior, pp. 166-175.

[4] *Korematsu* v. *United States*, 323 U. S. 214, 219. About 20,000 evacuees requested repatriation to Japan; about 9,000 refused to answer Question 28 in the affirmative. *The Evacuated People*, pp. 156-165. It was contended later that the failure to answer Question 28 in the affirmative was not necessarily indicative of disloyalty (R. 149). Hearings before the Committee on Immigration and Naturalization, House of Representatives, 78th Cong., 2d Sess., on H.R. 2701, etc., pp. 36-40.

[5] Probably about one-third. *The Evacuated People*, pp. 166, 169, Table 77.

The quarters at Tule Lake were a modification of Army camp barracks.[6] Living conditions apparently were primitive, and most of the segregees were subject to idleness. Cf. *Acheson* v. *Murakami*, 176 F. 2d 953, 955-957 (C.A. 9). But these drawbacks were largely sins of omission caused by the inability to make better provisions in a war economy.[7] There are no charges of systematic intentional brutality on the part of the camp authorities, and there can be no comparison between Tule Lake and the concentration camps maintained by totalitarian powers. As a matter of fact, one of the motives given by renunciants for their act of renunciation was the desire to be permitted to stay at Tule Lake rather than be exposed to the hostile outer world.[8]

In view of the high percentage of applicants for repatriation at Tule Lake, it was not astounding that the leadership among the camp population fell into the hands of a group of ardent pro-Japanese nationalists who sought to prepare inhabitants spiritually and socially for the return to Japan. Thus, Japanese schools sprang up, Emperor worship was introduced, the young men engaged in

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[6] *The Spoilage*, pp. 29-30. *The Spoilage* by Dorothy S. Thomas and Richard S. Nishimoto, which is highly critical of the evacuation program, was introduced into evidence at petitioners' request, R. 413.

[7] It should not be overlooked, moreover, that all standards of living are affected by wartime conditions. War exacts its toll from everyone. *Korematsu* v. *United States*, 323 U. S. 214, 219-220.

[8] *Infra*, p. 9.

para-military drills and wore Japanese style dress and haircut (R. 161, 163, 167-168). This militant pro-Japanese element sought to proselytize those camp inhabitants who were less sanguine about the return to Japan and those who were loyal to the United States, using not only methods of persuasion but also strong social and physical pressure (R. 161-162, 324-397).[9]

2. *The renunciations.* On July 1, 1944, Congress amended the Nationality Act of 1940 by adding to Section 401 a subsection (i), (*supra,* p. 3), which authorized American citizens in time of war[10] to give up their American nationality within the United States by making a formal written renunciation if the Attorney General should approve such renunciation as not contrary to the interests of national defense.[11]

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[9] Cf. the findings of fact in *Acheson* v. *Murakami*, 176 F. 2d 953, 961-962 (C.A. 9).

[10] Pursuant to Sec. 3 of the Joint Resolution of July 25, 1947 (61 Stat. 449, 451, 454), the state of war was terminated, for the purposes of Sec. 401(i) of the Nationality Act, as of July 25, 1947.

[11] Prior to the Act of July 1, 1944, American nationality could be formally renounced only outside the United States, since it was felt that a person should not be able to shed the burdens of allegiance and still retain the benefits of residing in this country. Hearings before the Committee of Immigration and Naturalization, House of Representatives, 76th Congress, 1st Session on H.R. 6127 superseded by H.R. 9980, p. 492. It was, however, felt that in time of war, American citizens who were also nationals of an enemy country should be able to give up their American nationality if they felt that they owed primary allegiance to the enemy, and thus place themselves and the United States in an unambiguous position. Cf. Statement of Attorney General Biddle, Hearings before a Special Committee on Un-American Activities, House of

Regulations under this Amendment were issued on October 6, 1944[12] (R. 164), and shortly afterward, the Department of Justice was flooded with applications for renunciation (R. 164). The Department—fearing that some of these applications might have been prompted by mistake, coercion, or reasons other than the genuine desire to give up allegiance to the United States—decided to make the renunciation procedure far more cumbersome than required by the statute (R. 165). An inspection of the Tule Lake Center convinced the officials of the Alien Enemy Control Unit of the War Division of the Department of Justice that members of the nationalist pro-Japanese faction were putting considerable pressure on others to make them renounce their American nationality (R. 168-170). In order to counteract this coercion, the Department of Justice secured the immediate removal from Tule Lake of the ringleaders, after they had renounced their nationality (R. 168-169, 182-184). In addition, the Department interrogated every renunciant so as to determine whether his renunciation had been caused by intimidation, outright coercion, mistakes, or other reasons inconsistent with a free and voluntary election to give up a burdensome and undesired allegiance (R. 172-179).

Representatives, 78th Cong., First Sess. on H. Res. 282, Vol. 16, pp. 10071-10080 at 10077; Hearings before the Committee on Immigration and Naturalization, House of Representatives, 78th Cong., 2d Sess., on H.R. 2701, etc., p. 42; S. Rep. 1029, 78th Cong., 2d Sess.

[12] 9 F.R. 12241.

All persons of Japanese descent, except the applicant, were excluded from these hearings to avoid any fear of reprisal or denunciation (R. 177). The responses given by the vast majority of the renunciants stated that at that time they were affirmatively loyal to Japan, that they believed in and hoped for a Japanese victory, and that they were actively disloyal to the United States (R. 185, 212-213, 215, 218, 219-220).

It developed later that many renunciants had deceived the Department of Justice officials (R. 589)[13], and that they had been motivated in part by fear of reprisals on the part of the nationalist groups (R. 396-397; *Acheson* v. *Murakami,* 176 F. 2d 953, 958); by utilitarian motives, such as the belief that Japan would win the war and that a pro-Japanese record would be advantageous (R. 204; *The Spoilage,* p. 326); by the desire to avoid the draft (R. 202, 386-389, 395; *The Spoilage,* pp. 317, 326); by the fear of being discharged from Tule Lake and forced to resettle in hostile surroundings (R. 171, 200-201, 395; *The Spoilage,* pp. 345-350); or by the desire to keep intact families in which one or more members had renounced United States nationality (R. 395; *The Spoilage,* pp. 350-351). In some instances, the renunciation resulted from a reaction to pre-war racial discrimi-

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[13] This deception was facilitated by the "college of renunciation knowledge" set up by the pro-Japanese organization. Findings of Fact of the District Court in *Acheson* v. *Murakami,* 176 F. 2d 953, 963.

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nation, resentment at the evacuation program, the despair and hysteria of camp life [14] and the hardship suffered there, or the feeling that the United States had failed them (R. 188, 393-394; *The Spoilage*, pp. 348-349; *Acheson* v. *Murakami*, 176 F. 2d 953, 958 (C.A. 9)).

In spite of all these pressures and motivations, the number of renunciations was relatively small. Approximately 72,650 of the evacuees were American citizens by birth.[15] Of these, 5,589, *i.e.*, less than 10%, renounced their United States nationality[16]; even at Tule Lake, with its high percentage of persons sympathizing with Japan to a larger or lesser degree (R. 199)[17], only 5,461, *i.e.*, less than one-half of the native-born camp population of approximately 12,500[18], took this definitive step.

3. *The proceedings below.* After the war had ended in victory for the United States, petitioners brought these proceedings to rescind their renunciations.[19] At that time, the United States had issued removal orders under the Alien Enemy Act of 1798 (1 Stat. 577, 50 U.S.C. 21) against the renunciants on the ground that they were enemy nationals. The instant proceedings were originally

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[14] Cf. R. 205-207.
[15] *The Evacuated People*, p. 67.
[16] *The Evacuated People*, p. 177.
[17] *Supra*, pp. 4-5.
[18] *The Evacuated People*, pp. 169-177.
[19] The first requests for cancellation of the renunciation were submitted in June, 1945 (R. 191), *i.e.*, after the defeat of Japan's Axis partner, Germany. The vast majority of the requests were filed only after the surrender of Japan (R. 192).

brought by 975 renunciants; 3,340 joined subsequently. While these civil actions were in progress, the Department of Justice conducted hearings as the result of which the removal orders were dropped against all but 302 of the renunciants.[20]

After both sides had moved for summary judgment and for judgment on the pleadings, it was stipulated to submit the case to the court on the documents and affidavits submitted, and that the proof be deemed closed, provided that the court should have the authority to order the production of further evidence when it deemed it necessary (R. 408 (a)-(b)). In its opinion, the District Court held that, at the time of their renunciations, the renunciants acted abnormally as the result of abnormal conditions not of their own making (R. 425). It realized, however, that certain of the renunciants had acted freely and voluntarily and, therefore, authorized the Government to designate any of the plaintiffs as to whom it desired to produce additional evidence (R. 422, 427).

Pursuant to this authorization, the Government submitted a detailed classification of the plaintiffs, indicating factors which had a definite bearing on the sincerity of his or her renunciation (R. 550-576). This tabulation showed that about 1400 of the plaintiffs had voluntarily returned to Japan,

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[20] Approximately 2,500 renunciants joined the actions at a time when the removal proceedings against them had been cancelled. See the Government's Cross-Petition in Nos. 121, 122, pp. 7-8.

after their renunciations, that many of petitioners had received their schooling there, were leaders or members of pro-Japanese pressure groups, had applied for repatriation to Japan prior to renunciation of United States nationality, or had failed to answer Question 28 (*supra*, p. 5) in the affirmative (R. 550-559, 562-563, 570). The District Court held that this comprehensive list did not comply with the directives contained in its opinion, struck it from the record, and ordered the entry of judgment in favor of *all* the plaintiffs. The findings of fact include a finding to the effect that the renunciation of each plaintiff had been secured by duress (R. 466).

While the appeal from this decision was pending, the Court of Appeals for the Ninth Circuit handed down its decision in *Acheson* v. *Murakami*, 176 F. 2d 953, holding that the plaintiffs in that case had renounced their nationality as the result of intimidation by pro-Japanese elements at Tule Lake and therefore should be restored to citizenship. The United States acquiesced in that decision and indicated that it would not oppose relief in future cases of this kind coming fairly within the *Murakami* case.[21]

In the instant case, the Court of Appeals affirmed the decision of the District Court with respect to

[21] Appendix, *infra*, pp. 25-28. By August 2, 1951, the Department of Justice had advised the State Department in 129 instances that in its opinion the case of a renunciant came within the scope of the *Murakami* decision.

the plaintiffs who were minors or incompetents at the time of their renunciation (R. 605-606), and those against whom the only charge was that they had gone to Tule Lake in order to stay with family members (R. 608-609).[22] With respect to the remaining adult renunciants, it reversed the judgment below on the ground that the record disclosed with certainty that many of the petitioners had voluntarily renounced their nationality, and had been disloyal to the United States, and that many became interested in the cancellation of their renunciations only when the collapse of Japan indicated that the material living conditions in the United States were vastly superior to those in Japan, and finally that many of those petitioners who had spent their formative years in Japan were definitely pro-Japanese (R. 604). It pointed out that it was as much the duty of the Government to oppose the restoration of citizenship to the disloyal as to reinstate the victims of duress. (R. 605). It therefore remanded the cause for further proceedings in the District Court (R. 609).

ARGUMENT

Petitioners have no cause to complain of the correctness of the decision of the court below remanding the proceedings for a determination whether

[22] See the Government's cross-petition in No. 121. The court also upheld its jurisdiction with respect to those plaintiffs who were no longer subject to removal and even as to those who had joined the proceedings after the removal orders against them had been cancelled.

the individual petitioners had renounced their American nationality voluntarily or under circumstances which justify a recission;[23] nor is there a conflict or any other ground for review by this Court.

1. The findings of the District Court that all of the renunciations had been caused by duress and coercion was clearly erroneous and it would have been an error on the part of the Court of Appeals not to set it aside. Rule 52, Federal Rules of Civil Procedure, provides that findings of fact shall not be set aside unless "clearly erroneous". This has been interpreted to mean that "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed". *United States* v. *United States Gypsum Co.*, 333 U. S. 364, 395.

a. The question is not whether some of the petitioners gave up their American nationality under duress,[24] but whether it has been shown that every petitioner has renounced his citizenship under duress; obviously, a wrong committed toward one of the petitioners can not enure to another one's benefit. Cf. *Hartsville Oil Mill* v. *United States*, 271 U. S. 43, 48. The record on the whole, and the trial judge's opinion (R. 422), show conclusively that the renunciations were not coerced in every

[23] On the contrary, see the jurisdictional and evidentiary issues raised by respondents in their cross-petition in No. 121.
[24] This point has been conceded, *supra*, p. 12.

instance, but to the contrary that many of the petitioners owed allegiance to Japan to the extent that they voluntarily returned there and coerced others into renunciations, that others had spent their formative years in that country and presumably preferred it over this nation, and that many had given up their nationality out of resentment [25] or purely opportunist motives such as to be on the winning side or to avoid the draft.[26] This variety of motives has been established convincingly by the affidavits of Mr. Burling [27] (R. 147-210, at 198-207) and of Miss Hankey [28] (R. 324-397, at 391-397) and also by the conclusions reached in *The Spoilage,* Ch. XIII.[29] The sole evidence to the contrary are five affidavits submitted by petitioners (R. 223-317, cf. R. 413) which purport to know the state of mind of each of the 4,315 plaintiffs—apparently also of those plaintiffs who joined the proceedings after the execution of the affidavits—but significantly fail to explain why these condi-

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[25] Note the longstanding literary tradition that resentment does not excuse or invalidate an act of expatriation. Edward E. Hale, *The Man Without A Country.*

[26] Opportunist motives do not justify the recission of a renunciation. *Savorgnan* v. *United States,* 338 U. S. 491, 502; *Doreau* v. *Marshall,* 170 F. 2d 721, 724 (C.A. 3).

[27] Mr. Burling's affidavit was characterized by the District Court as "a fair, temperate and dispassionate statement of the circumstances backgrounding the renunciations" (R. 422-423).

[28] Miss Hankey was an anthropologist unconnected with the government; her affidavit, on the whole, is highly critical of the Government and sympathetic with the problems of the segregees.

[29] As pointed out above (fn. 6, *supra,* p. 6), *The Spoilage* was introduced into evidence at petitioners' initiative.

tions failed to affect those evacuees and segregees who decided to retain their United States nationality.

The decisive finding of fact that *all* renunciations were coerced (R. 466) is erroneous according to the very standard set by the District Court itself in its opinion, which held (R. 422):

> Only a comparatively small number of renunciants acted with complete freedom of action, as evidenced by their subsequent acts in requesting repatriation followed by actual repatriation to Japan.[30]

Still the court disregarded the offer of proof that about 1,400 plaintiffs had voluntarily returned to Japan (see *supra*, pp. 11-12).

b. The decision of the trial court was apparently based on its assumption that a "class showing" had been made to the effect that in the vast majority of the cases the renunciations had been executed under duress (R. 426). This constituted error as the court below properly pointed out (R. 606-609).

First, in contrast to the original complaint (R. 6) the amended complaint (R. 92-121) was not filed as a class suit.[31] Second, even if this were a class action, since there has been a diversity of possible motivations, the individual frames of mind of the several plaintiffs at the times they renounced their nationality cannot, under our philosophy of gov-

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[30] Actually, the requests for repatriation preceded renunciation and were one of the reasons for segregation at Tule Lake; see *supra*, p. 5.

[31] See the Government's cross-petition, No. 121, at pp. 15-19.

ernment, be regarded as common questions of law or fact (Rule 23(a)(3)).[32] The impelling causes for renunciation have to be established separately as to each individual plaintiff; proof as to a majority is insufficient as to the others. And the massing of thousands of plaintiffs plainly does not confer any additional substantive rights upon them. *California Apparel Creators* v. *Wieder of California*, 162 F. 2d 893, 897 (C. A. 2), certiorari denied, 332 U. S. 816. To attribute fear or a feeling of compulsion to all of the petitioners solely because certain of them were so moved partakes of some of the same dangers as the converse concept of guilt by association.

It is true that the determination of the motives of each of the 4,315 plaintiffs may create problems in the administration of justice in the Northern District of California. This, however, is the direct consequence of the trial court's decision to permit this case to assume these proportions, not of any intransigeance on the part of respondents, and the difficulties can undoubtedly be overcome by cooperation of court and counsel.[33]

The renunciation of nationality is a serious mat-

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[32] Cf. Mr. Justice Douglas concurring in *Hirabayashi* v. *United States*, 320 U. S. 81, 107-108.

[33] The procedure upon remand will be greatly simplified, for example, by respondents' willingness to accept affidavits as to the fact of coercion rather than to insist upon strict proof. See Appendix, *infra*, pp. 25-26, 28.

With respect to the issues petitioners seek to raise concerning a proper interpretation of the stipulation (Pet. 44-47), we do not believe that they are of the kind which call for the exercise of the supervisory jurisdiction of this Court. The Court of Appeals did not read the stipulation as petitioners do, and apparently the District Court did not do so, either.

ter not easily to be set aside. *Savorgnan* v. *United States,* 338 U. S. 491. Even more so is the restoration of nationality to persons adhering to totalitarian principles, whether of the right or of the left, especially since their naturalization is now prohibited. Internal Security Act of 1950, Sec. 25, 8 U. S. C., Supp. IV, 705, amending Sec. 305 of the Nationality Act of 1940, 8 U. S. C. 705. Accordingly, it is important that the petitioners' status should be individually determined on the basis of the actual facts, so far as they can reasonably be found, and not by the broad and uncritical generalities employed by the District Court.

2. Petitioners also claim that their detention at Tule Lake was illegal and in violation of constitutional guarantees, and that, therefore, any statement made by them during this illegal confinement was void. We submit, however, that petitioners' detention at Tule Lake was not illegal and, second, that, even if it were so, this circumstance would not automatically nullify the renunciations.

a. This Court previously has passed on certain phases of the evacuation program. *Hirabayashi* v. *United States,* 320 U. S. 81; *Korematsu* v. *United States,* 323 U. S. 214; *Ex parte Endo,* 323 U. S. 283. In the latter case, the Court held illegal the continued detention of a citizen whose loyalty to this country had been conceded. Petitioners do not come within this classification. Their loyalty was

contested; as to all but 58 of them (R. 608), there was some act or circumstance which cast serious doubt on their true allegiance to the United States (R. 550-559). The great majority of the residents at Tule Lake had been segregated there because they had applied for repatriation to Japan or because they had refused to answer Question 28 in the affirmative (*supra*, p. 5). Under the *Korematsu* decision, these acts were certainly sufficient to warrant internment at that time.

Petitioners *now* submit explanations for these acts. They claim, for example, that an affirmative answer to Question 28 might have been construed as an admission that they owed allegiance to the Emperor of Japan (R. 228-229). Even if this be an accurate description of their inner feelings, it can hardly serve to illegalize their detention. Ninety percent of the evacuees did not make this fine spun rationalization and chose to testify to their allegiance to this country in spite of the supposed danger. The burdens of citizenship in wartime are heavy. *Korematsu* v. *United States*, 323 U. S. 214, 219-220. See also *Lichter* v. *United States*, 334 U. S. 742, 767. The Government could rightfully segregate and detain the minority of citizen evacuees who objectively acted in such an uncooperative and hostile manner as to cast serious doubts on their friendly disposition toward the United States. The residents of the other evacuation centers had suffered similar hardship and pri-

vations as the segregees at Tule Lake. The facts that these other detainees openly avowed their loyalty and that there were hardly any renunciations outside of Tule Lake indicates that the segregation was justified, at least initially, and also tends to show that many of the segregees did not bear the same unqualified allegiance to the United States as the other evacuees (cf. R. 198-199).

b. But even if it were assumed *arguendo* that the petitioners' detention at Tule Lake constituted a violation of the Bill of Rights, such illegality would not automatically void their renunciations. Petitioners cite cases like *Bram* v. *United States,* 168 U. S. 532; *Weeks* v. *United States,* 232 U. S. 383; *McNabb* v. *United States,* 318 U. S. 332; *Upshaw* v. *United States,* 335 U. S. 410; and *Lustig* v. *United States,* 338 U. S. 74, as their authority for the proposition that the renunciations are void. These decisions, however, deal with the question of the admissibility of evidence, not with the different problem whether a voluntary statement has the legal effect it was intended to have. We submit that there is a wide gap between the procedural inadmissibility of evidence secured through violation of a constitutional or statutory provision,[34] and the substantive validity of a unilateral or contractual transaction which merely happens to have occurred

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[34] The taint of illegality of improperly obtained evidence is waived by the failure to make a timely motion to suppress. *Segurola* v. *United States,* 275 U. S. 106; *Garhart* v. *United States,* 157 F. 2d 777, 779 (C.A. 10).

during a period when a person's rights were otherwise being violated.[35]

Moreover, the unlawful search-and-seizure and illegal-detention cases are hardly applicable even by way of analogy. The federal search-and-seizure exclusionary rule is judicially implied from the command of the Fourth Amendment, but it is not required by the Fourteenth, although the latter incorporates the substantive right granted by the former. *Wolf* v. *Colorado,* 338 U. S. 25, 28-29. And the outcome of *McNabb* v. *United States,* 318 U. S. 332, was based upon the clear violation by federal law enforcement officers of an express statutory command (at 341-345), and reflected the power of this Court to supervise the administration of criminal justice in the federal courts (at 340). In the instant case, the officials involved acted under, rather than in defiance of, federal legislation (Act of March 21, 1942, 56 Stat. 173, and Sec. 401(i) of the Nationality Act, 58 Stat. 677, 8 U. S. C. 801(i), *supra,* p. 3), and, in addition, it cannot be said that the Court has ever exercised similar policing powers with respect to extra-judicial proceedings, such as those involved here.

3. In renouncing their American nationality, petitioners availed themselves of Sec. 401(i) of the Nationality Act of 1940 (8 U.S.C. 801(i)) which was added by the Act of July 1, 1944 (58 Stat. 677), *supra,* p. 3. They now claim that this Act consti-

[35] On this point, it must be assumed that the renunciations were voluntary.

tutes discriminatory class legislation, and, therefore, is unconstitutional. The simplest answer to this contention is that, unlike the Fourteenth Amendment, the Fifth does not contain an equal protection clause and prohibits only legislation which is so arbitrary and injurious in its character as to constitute a denial of due process. *Detroit Bank* v. *United States,* 317 U. S. 329, 337-338; *Hirabayashi* v. *United States,* 320 U. S. 81, 100.

Sec. 401(i) patently does not constitute a denial of due process. It is nondiscriminatory on its face. It does not compel anyone to perform or omit an act or to apply for a license which according to a preconceived plan was to be withheld in a discriminatory manner. Cf. *Yick Wo* v. *Hopkins,* 118 U. S. 356. To the contrary, the statute is purely permissive in nature. It permits all citizens to avail themselves of the right of expatriation which Congress long ago declared is a natural and inherent right, indispensable to the enjoyment of the right of life, liberty and the pursuit of happiness (R. S. 1999, 8 U.S.C. 800).[36]

It is true that, in view of the circumstances which

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[36] It may even be that the failure to enact such a law might have been considered a violation of the "right to expatriation." As pointed out above (*supra,* fn. 11, pp. 7-8), the Nationality Act of 1940 did not authorize the renunciation of American nationality by an act performed within the United States. In view of the difficulties of leaving the country in time of war (cf. *Ludecke* v. *Watkins,* 335 U. S. 160, 166), but for the enactment of Sec. 401(i), a resident who at the same time was a national of the United States and of an enemy country and who felt that he owed his sole allegiance to the latter would have been prevented from renouncing a hated allegiance.

led to petitioners' segregation at Tule Lake (*i. e.* a petition for expatriation to Japan or failure to answer Question 28 in the affirmative (*supra*, p. 5)), the Department of Justice expected that a certain number of the segregees would avail themselves of the new privilege granted by the Act, but there is nothing to indicate that the application of the statute was to be limited to persons of Japanese extraction.[37] The legislative history shows that the Department of Justice carefully protected petitioners' constitutional rights when proposed bills made a mere negative answer to Question 28 an automatic act of expatriation,[38] and insisted that American nationality could be forfeited only by an additional voluntary act of renunciation.[39] Moreover, as has been shown above (pp. 8-9), the Department of Justice took the greatest precautions to insure that the renunciations were voluntary. Unfortunately, these efforts were not totally successful and pro-Japanese elements were able

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[37] R. 178 indicates that persons of non-Japanese ancestry were given renunciation hearings. The legislative history of Sec. 401(i) shows plainly that it was to apply to all citizens, regardless of their racial origin, even if the special problems of the segregees were the immediate cause which prompted the enactment of the bill. Hearings before the Committee on Immigration and Naturalization, House of Representatives, 78th Cong., 2d Sess., on H.R. 2701 etc. (hereinafter referred to as Hearings), p. 43; 90 Cong. Rec. 1789, 1982, 1986, 1989-1990, 1991.

[38] Hearings, pp. 34-64, 90 Cong. Rec. 1782-1789; 1981-1992.

[39] Hearings, p. 45; cf. p. 64. Cf. also 90 Cong. Rec. 1786, 1788, where fears were expressed that the bill proposed by the Department of Justice would be futile because the segregees would refuse to apply for renunciation.

to coerce others into renouncing their American nationality (*supra,* pp. 9, 12).

The facts remain, however, that the Act is, on its face, plainly constitutional and that the executive sought to administer it in a constitutional manner. The unexpected interference by a hostile and disloyal element,[40] especially where it is vigorously counteracted by the Government, cannot be deemed discriminatory governmental action rendering the statute unconstitutional; this circumstance only raises the issue whether coercion was present in individual cases.

CONCLUSION

The decision below is correct, so far as petitioners are concerned. There is no conflict. It is respectfully submitted that the petitions for writs of certiorari be denied.

PHILIP B. PERLMAN,
Solicitor General.

HOLMES BALDRIDGE,
Assistant Attorney General.

SAMUEL D. SLADE,
HERMAN MARCUSE,
Attorneys.

SEPTEMBER, 1951.

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[40] Under the disposition of the case by the District Court, it is quite possible that nationality is restored to these very persons.

APPENDIX

DEPARTMENT OF STATE,
Washington, Nov. 29, 1949.

In reply refer to 130-Japanese/326.

Mr. H. G. MORISON,
Assistant Attorney General,
Department of Justice,
Washington 25, D. C.

MY DEAR MR. MORISON:

Reference is made to your letter of October 25, 1949, File No. HGM/EEE, 146-54-5501, giving your views regarding the scope of the decision of the United States Court of Appeals for the Ninth Circuit.

You indicate in your letter that in view of the decision of the Solicitor General not to appeal the aforementioned decision, your Department has decided not to oppose relief in future cases of this kind coming fairly within the decision of the Court of Appeals. You also indicate that the cases of renunciants as to whom the Government files disclose evidence of loyalty to Japan or disloyalty to the United States are considered as not coming within the scope of the Murakami decision and that such cases will be opposed vigorously.

In view of the determination of the Solicitor General not to appeal the Murakami decision, this Department has reached the conclusion that it will recognize as an American citizen any Japanese renunciant who is able to bring his or her case within the meaning of the Murakami decision. For the purpose of determining whether an individual case comes within the meaning of the aforemen-

tioned decision, each renunciant will be required to execute an affidavit along the lines suggested in your letter. This affidavit, when received, will be forwarded to your office for an expression of your views in the matter and upon the receipt of your reply, this Department will determine whether the subject should be documented as an American citizen.

The procedure mentioned above will apply to renunciants who apply for American passports in this country as well as to renunciants who apply for documentation as American citizens abroad.

Sincerely yours,

(S.) R. B. SHIPLEY,
Chief, Passport Division.

Enclosure:
Copy of this letter.

For Immediate Release: Wednesday, October 26, 1949.

DEPARTMENT OF JUSTICE

Attorney General J. Howard McGrath today announced that the Department of Justice will not ask the Supreme Court to review the recent decision of the United States Court of Appeals for the Ninth Circuit holding that three American-born women of Japanese ancestry continue to be United States nationals notwithstanding the fact that they renounced their citizenship during the war after having been evacuated from their homes in the West Coast Defense Area and placed in the War Relocation Center at Tule Lake, California.

This decision was handed down on August 26, 1949, in the case of *Dean Acheson, as Secretary of State,* v. *Miye Mae Murakami et al.*

The Court's opinion, which was written by Chief Judge Denman, stressed the findings of Judge Mathes of the United States District Court at Los Angeles, that plaintiffs were loyal American citizens who had been subjected to propaganda and abuse by pro-Japanese pressure groups while they were residents at the Tule Lake Segregation Center.

The Court said that fear of reprisal from such groups caused some of the renunciations and that others renounced because they feared prejudice and possible violence at the hands of the white population if they left the center.

These considerations led the Court of Appeals to affirm the decision of the District Court that the plaintiffs' applications for passports had been erroneously denied by the State Department.

While the Court of Appeals seems to have indicated also, that the evacuation program was influenced by race prejudice, the Attorney General made it clear that he did not concur in that view. He feels, however, that the facts found by both the District Court and the Court of Appeals to the effect that, although the plaintiffs did not wish to do so, they were actually driven to their decisions to renounce by fears engendered by intimidating activities of pro-Japanese groups at Tule Lake or hostility of Caucasians outside the center, constituted a sufficient basis upon which the courts could reasonably hold that the renunciations were coerced and were, therefore, invalid.

In further amplification of the position of the

Department of Justice, Assistant Attorney General H. Graham Morison said that the decision of the Court of Appeals would be accepted and applied by it in all future cases of this kind brought within the jurisdiction of the courts.

This, of course, does not apply to any renunciant as to whom the Government files disclose evidence of disloyalty to the United States.

He explained that although application of the decision under the Attorney General's ruling requires the introduction of evidence as to the reasons for individual renunciations, the simplified procedure approved in that case could probably be made available to plaintiffs by stipulation in the vast majority of the cases coming within the scope of the decision, thus making it unnecessary for them to give oral testimony in Court.

Mr. Morison declined to express an opinion as to whether or not the Department of State would require other renunciants to obtain judicial adjudications of citizenship prior to the issuance of passports.

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